



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

██████████
Docket No. 4118-21
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

A three-member panel of the Board, sitting in executive session, considered your applications on 16 December 2021. The names and votes of the members of the panel will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your applications, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies.

The Board carefully considered your request for remedial promotion consideration for Fiscal Year (FY) 2017, 2018, and 2019 to the grade of gunnery sergeant (GySgt)/E-7. The Board noted that you were considered below the zone for promotion by the FY 2017 GySgt Promotion Selection Board, and did not incur a failure of selection by that board. Therefore, the Board only considered your request for remedial promotion consideration by the FY 2018 and FY 2019 promotion selection boards.

The Board considered your contention that unjust documentation was removed from your service record and that the documentation prevented you from being promoted. The Board also considered that previous panels of this Board removed your 2 August 2016 Page 11 counseling entry and your 3 August 2016 rebuttal statement (BCNR Docket No. 4165-17), and your fitness reports for the reporting period 31 August 2015 to 5 August 2016 and 1 October 2016 to 30 September 2017 (BCNR Docket No. 9637-19). The Board also noted that, although you requested, your fitness report for the reporting period 30 September 2017 to 1 July 2018 was not removed by a previous panel of this Board (BCNR Docket No. 9637-19).

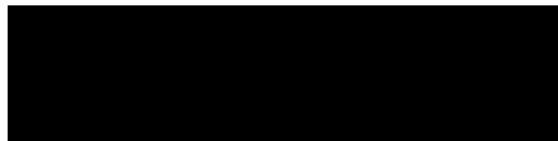
The Board, however, determined that, pursuant to the Marine Corps Promotion Manual (MCO P1400.32D), granting an enlisted remedial selection board (ERSB) requires an individual to demonstrate that they exercised due diligence in correcting their record prior to the convening of their respective promotion selection board. The Board noted, however, you did not petition the Board to remove your fitness reports until after you had twice-failed selection to gunnery sergeant. Additionally, per MCO P1400.32D, Marines who have been discharged are not eligible for remedial promotion consideration. The Board thus concluded that, because you have been discharged from the Marine Corps, and because you did not exercise due diligence in correcting your record prior to the convening of the FY 2018 and FY 2019 promotion selection boards, granting an ERSB is not warranted.

You also indicate in your application that you are the victim of reprisal. The Board, however, determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC 1034. 10 USC 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy's follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with DoD policy you have the right to request review of the Secretary of the Navy's decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a *de novo* review and under 10 USC 1034(c) the Secretary of Defense cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Office of Legal Policy, 4000 Defense Pentagon, Washington, DC 20301-4000. Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and, a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the BCNR, therefore, please also include previously presented documentation that supports your statements.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

1/7/2022

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Deputy Director

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