



The Board, however, substantially concurred with the AO that your NJP is valid. In this regard, the Board noted that you received NJP for violating Uniform Code of Military Justice (UCMJ) Article 92 and Article 95 by being derelict in the performance of your duties by failing to stand duty and leaving your post before being regularly relieved. The Board also noted that you acknowledged your Article 31, UCMJ Rights, accepted NJP, certified that you were given the opportunity to consult with a military lawyer, acknowledged your right to appeal, and you elected not to appeal your commanding officer's (CO's) finding of guilt at NJP. The Board noted, too, that according to the Manual of the Judge Advocate General (JAGMAN), if no punishment is awarded at an Article 15, UCMJ hearing, the effect is the same as if the charges were dismissed at the hearing. If no punishment is awarded or the charges were dismissed, a subsequent non-judicial punishment may be held for the same offenses. In consideration of the contentions and the JAGMAN, the Board determined that your CO was not prohibited from imposing NJP on 27 October 2020 for the same offenses. The Board also determined that the prohibition against double punishment was not violated and your CO conducted your NJP pursuant to the *Manual for Courts-Martial* (2019 ed.).

Concerning the revocation of your promotion to SSgt, the Board noted that the Marine Corps Enlisted Promotion Manual mandates that COs immediately notify CMC (MMPR-2) prior to the effective date of promotion if there is an intent to recommend revocation of a staff non-commissioned officers (SNCOs) certificate of appointment. The Board found no evidence that you were not afforded the opportunity to review the CO's recommendation and you provided none. The Board determined that your CO provided sufficient justification to recommend the revocation of your promotion. Ultimately, the Commandant of the Marine Corps (CMC) is the final authority for SNCO promotions and, after a review of your case and related matters, determined that your selection to SSgt should be revoked. Moreover, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. The Board found your evidence insufficient to overcome this presumption.

Concerning your request to remove your fitness report for the reporting period 16 June 2020 to 4 November 2020, the Board determined that you have not exhausted your administrative remedies. The Performance Evaluation Review Board (PERB) is the initial action agency for fitness report appeals, therefore, you must submit your request to the PERB according to the Marine Corps Performance Evaluation Appeals Manual. Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when



applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

5/27/2022



Executive Director

