



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

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Docket No. 4828-21
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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board, sitting in executive session, considered your applications on 13 January 2022. 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 application, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations and policies, as well as the Advisory Opinions (AO) provided by Headquarters Marine Corps Personnel Law Branch (JPL) and Manpower and Reserve Affairs (MMPR-2) dated 17 October 2021 and 23 November 2021, respectively. Both AO's was provided to you and although you were given 30 days to respond, you chose not to.

The Board carefully considered your request to be retroactively promoted to the rank of E-6/Staff Sergeant (SSgt) from 19 December 2017 to 19 February 2021 and to receive all basic pay and entitlements you would have received if not for the delayed promotion. The Board considered your contentions that: (a) you were selected for promotion to E-6 for Fiscal Year 2017; (b) your promotion was delayed until the final results of a pending Special Court-Martial (SPCM); (c) the Navy Marine Corps Criminal Court of Appeals reversed the SPCM in October 2020 and ordered a sentence rehearing; and (d) you were subsequently retroactively awarded all E-5 pay and entitlements.

The Board, however, substantially concurred with the AO's that although the assault charge against you was dismissed and the convening authority approved a sentence of no punishment, you were still lawfully convicted of two violations of the UCMJ, and that conviction remained a

part of your record. Furthermore, the Board noted that your command did not contact MMPR-2 in accordance with the applicable Promotion Manual upon your SPCM conviction, did not provide a recommendation to delay, withhold, or revoke the promotion, nor did they initiate a review of your promotion to E-6 once your restriction status ended. MMPR-2 provided an appropriate AO and recommended that your record remain unchanged. The Board concurred with this recommendation and noted that per the Promotion Manual, "promotions will not be backdated for the purposes of increasing pay and allowances, nor when a period of promotion restriction or delay has ended and the commander subsequently recommends delivery of the promotion." Furthermore, the only exception to this rule when a Marine is "issued the original date of rank and effective date is in the case of a delay where the Marine is subsequently exonerated of all wrongdoing." The Board noted that your promotion was not in a delayed status nor where you "exonerated of all wrongdoing." In light of this, the Board thus concluded that your request is lacking in substantial evidence of error or injustice warranting promotion to the rank of E-6/SSgt.

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,

1/27/2022

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Executive Director

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