



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. 5241-21
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 10 February 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 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 to remove your 25 August 2020 to 29 January 2021 Fitness Report (Fitrep), as well as your 29 January 2021 Unit Punishment Book (UPB)/non-judicial punishment (NJP) entry and Administrative Remarks (Page 11) 6105 counseling entry. The Board considered your contentions that the NJP was unjust and inaccurate due to undue command influence by the Regimental Sergeant Major (SgtMaj). You also contend that the no-contact order was invalid due to a false allegation by a junior Marine, and the no-contact order was not issued by the Regimental Commander, it was electronically signed by him and given to you by the Company First Sergeant. You assert you were coerced and threatened by the SgtMaj not to request a court-martial, and warned that if you did, the Regimental Commander would process you for administrative separation.

The Board noted you received NJP for violating two specifications of Article 92, Uniform Code of Military Justice (UCMJ), for failure to obey an order or regulation. The Board also noted that you acknowledged your Article 31, UCMJ Rights, you were afforded the opportunity to consult with counsel, you accepted NJP, and you did not appeal your Commanding Officer's (CO's) finding of guilt at NJP. The Board determined that your CO had the authority to impose NJP based on his position and the nature of the offenses. The Board further determined that your NJP

is valid and was conducted according to the Manual for Courts-Martial (2019 ed). The Board also noted that you did not provide any evidence that you were coerced or threatened by any members of your command to accept NJP and not request a court-martial. The Board thus concluded the NJP did not constitute probable material error or injustice warranting removal from your record.

The Board further noted that, by signing the 6105 counseling entry, your CO indicated that he believed it to be appropriate based on the facts and circumstances, using a preponderance of the evidence standard. The Board thus determined that the issuing officer was well within his discretionary authority to issue the counseling entry, and that the entry met the 6105 counseling requirements detailed in the Marine Corps Separations Manual. The Board noted that the entry provided written notification concerning your deficiencies, specific recommendations for corrective action indicating any assistance available, a comprehensive explanation of the consequences of failure to successfully take the recommended corrective action, and a reasonable opportunity to undertake the recommended corrective action. You were afforded the opportunity to rebut the counseling. The Board noted that, although there is no written rebuttal filed with your Page 11 counseling, you did assume full responsibility for your actions when responding to the corresponding allegations addressed in your contested Fitrep.

The Board noted that a 6105 counseling is given a presumption of regularity which requires you to provide substantial evidence that the commander's decision was unjust or was materially in error. The Board noted that you did not provide evidence to this presumption of regularity. The Board thus concluded that the Page 11 6105 counseling entry does not constitute probable material error or injustice warranting removal from your record.

With regards to your request to remove your Fitrep, the Board determined that you did not exhaust all administrative remedies by first petitioning the Headquarters Marine Corps Performance Evaluation Review Board.

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,

3/7/2022

Deputy Director