



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: 5205-21
Docket No: 5535-21
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 20 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 the 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 determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully considered your request to remove your 16 July 2021 Administrative Remarks (Page 11) 6105 counseling entry and your 26 July 2021 rebuttal. You contend that the preliminary inquiry (PI) conducted yielded no substantial evidence that an offense occurred. You assert that a communication error may have occurred rather than a violation of Article 107 of the Uniform Code of Military Justice. You further contend that the investigating officer (IO) initiated the investigation with you on 2 July 2021, but the appointing letter assigned him as the IO on 3 July 2021, which would constitute an unauthorized investigation.

The Board also carefully considered your request to remove your Page 11 6105 counseling entry and Page 11 promotion restriction entry, both dated 16 July 2021. The Board considered your contention that the 25 June 2021 PFT/CFT Performance Worksheet does not reflect that you had a failing 3-mile run score. You assert that the 3-mile run time of 30:18 written on the Page 11 is incorrect and that run time is not recorded on any other official document.

With regard to your contention that the IO conducted an authorized investigation, the Board determined that your contention lacks merit. The Board determined that, even assuming *arguendo*—but not conceding—that this did occur, it is harmless and not material, because the failure to advise you of your

rights only makes any unwarned statement you made inadmissible at a court-martial; other uses (nonjudicial, administrative uses) of an unwarned statement are not prohibited.

By signing both contested 6105 counseling entries, your Commanding Officer (CO) indicated that he believed it to be appropriate based on the facts and circumstances, and using a preponderance of the evidence standard. The Board thus determined that your CO was well within his discretionary authority to issue the counseling entries, and that the entries met the 6105 counseling requirements detailed in the Marine Corps Separations Manual. Specifically, the Board noted that the entries 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 chose to submit a written statement rebutting both counselings, and the statements were inserted in your official military personnel file in accordance with the Individual Records Administration Manual (MCO P1070.12K).

The Board also 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 further noted that you did not furnish sufficient evidence to rebut this presumption of regularity. The Board thus concluded that your evidence is not sufficient to warrant relief for either 6105 counseling entries.

With regard to your Page 11 promotion restriction entry, the Board determined that your CO was well within his discretionary authority to issue the entry in accordance with the Marine Corps Promotion Manual (MCO P1400.32D). The Board noted that promotion restrictions are not punitive in nature; they are intended to allow commanders a minimum period of time to observe a Marine whose conduct or performance has given the commander reason to doubt whether the Marine is ready to assume the duties and responsibilities of the next higher grade. The Board thus concluded that due to your misconduct documented in the contested 6105 counseling entries, the promotion restriction entry was warranted.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon the 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,

2/18/2022

Deputy Director