



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: 6967-21
Ref: Signature Date



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 application on 22 March 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, the 3 February 2022 advisory opinion (AO) furnished by the Marine Corps Military Personnel Law Branch (JPL). The AO was provided to you on 15 February 2022, and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

The Board carefully considered your request to remove all documents related to the revocation of your promotion to Gunnery Sergeant (GySgt/E-7). You also request to change your date of rank to 1 October 2019. The Board considered your contentions that: (1) the command failed to follow applicable regulations to revoke your promotion, the recommendation for revocation must contain a full detailed report of the circumstances, and the revocation was used as a form of punishment in the absence of substantiated misconduct or punitive measures; (2) since there was not sufficient evidence to pursue legal action, there was not sufficient evidence to revoke your promotion, and the Commanding Officer's (CO's) finding that there was enough evidence to support the allegations is erroneous, unsupported by the evidence and ignores the administrative separation board's (ASB's) findings; (3) it's an injustice for your promotion to be revoked when you were cleared by the ASB; (4) according to the timeline, your CO was unsuccessful at

effecting your separation, so you were punished by revoking your promotion and the promotion revocation package does not mention the ASB. You argue that the Board granted relief for a Petitioner acquitted at court-martial, after the complaining witness provided a statement recanting the allegations. You also argue that the Board granted relief for a Petitioner that was the subject of a command investigation, that did not receive NJP, but had his promotion revoked. You claim that witnesses testified that the complainant was emotionally unstable and a known liar, while you were a truthful person with a strong relationship with your wife. You also claim that the CO and Investigating Officer (IO) determined that more investigation by the Naval Criminal Investigative Service (NCIS) and Criminal Investigative Service (CID) was necessary.

The Board, however, substantially concurred with the AO that your promotion revocation was valid and your record should remain unchanged. In this regard, the Board noted that on 19 August 2019, a woman reported to the █ Police Department Report that “her boyfriend, [you] hit her in the face with his elbow and choked her.” The police report also indicated that she had a pronounced oval bruise approximately one and one half inch by one inch on her lower left jaw line. The Board also noted that SECNAVINST 1752.3B requires domestic violence incidents to be reported to the appropriate military law enforcement agency. The Board noted, too, that the command investigation (CI) into your alleged misconduct concluded that there was a relationship which brings discredit upon the armed forces and, further, the Family Advocacy Program (FAP) Incident Determination Committee (IDC) determined that your 19 August 2019 incident “met the criteria” for adult physical maltreatment against your intimate partner. Based upon those factors, the Board determined that your CO had sufficient evidence to determine that he had lost trust and confidence in your judgement and that your promotion to GySgt should be revoked. The Board also determined that pursuant to the Marine Corps Enlisted Promotions Manual (ENLPROMMAN), commanders are granted wide discretion to determine whether a staff non-commissioned officer (SNCO) meets “the Marine Corps standards of professionalism, personal performance and leadership.” Moreover, the ENLPROMMAN directs commanders not to promote a Marine who “has failed to maintain the high standards of professional and personal performance which led to selection and a Marine “will not” be promoted “if, in the opinion of the commander, the Marine will not or cannot perform creditably in the higher grade.”

Concerning your contention that your CO failed to follow applicable regulations and did not consider the findings by the ASB, the Board found no evidence that the revocation of your promotion was in error or that your chain of command acted with punitive intent. The Board determined that the CO provided sufficient justification and evidence to the Commandant of the Marine Corps (CMC) to support his recommendation, in addition to the full details of the circumstances to support his recommendation. Ultimately, as correctly explained in the AO, your CO and the CMC were not beholden to the findings of the ASB proceedings and the findings from those proceedings do not prevent either from determining your fitness for promotion based on other evidence of unfitness. Therefore, the Board concluded that the CMC had the discretionary authority and supporting evidence to revoke your promotion and to remove your name from the GySgt selection list and that the preponderance of the evidence does not support a finding that your promotion was wrongfully revoked.

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The Board noted your argument regarding previous cases, however, the Board determined that you were not similarly situation as those Petitioner's, each case is unique, and the decision to grant or to deny relief is determined by the merits of each case. 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 arguments and evidence insufficient to overcome this presumption. 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,

4/13/2022
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Executive Director
Signed █