



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

██████████
Docket No. 73-22
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 application on 19 May 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 Board also considered the 3 February 2022 advisory opinion (AO) furnished by Headquarters, Marine Corps Military Personnel Law Branch (JPL), as well as your undated rebuttal response received 9 March 2022.

The Board determined your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined 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 Unit Punishment Book (UPB) entry documenting your 19 November 2018 nonjudicial punishment (NJP) as well as the Administrative Remarks (Page 11) 6105 counseling entry documenting the NJP and the adverse fitness report received as a result of the NJP. The Board also considered your request to remove your 21 May 2019 Page 11 counseling and the associated 30 May 2019 rebuttal. The Board noted you modified your requested relief in your rebuttal response to the AO and also considered the modified request to 1) remove the UPB entry, associated counseling entry, and adverse fitness report OR 2) remove the 21 May 2019 counseling entry and associated rebuttal. Lastly, the Board considered your request to remove your failure of selection by the Fiscal Year (FY) 2019 Gunnery Sergeant Promotion Selection Board and grant remedial promotion consideration.

The Board noted your previous request, Docket No.: 4146-20, was partially granted. Specifically, you were granted the opportunity to add your rebuttal statement to the 21 November 2018 Page 11 counseling entry, but your requested relief regarding the UPB entry and corresponding Page 11 counseling and adverse fitness report were denied. The Board determined that these documents were factually correct and valid, and the Commanding Officer (CO) had justification to counsel you based on the guilty finding at NJP, and to document the adverse incident in a fitness report.

In your current request for correction, the Board noted you submitted a new statement and new evidence to include your reenlistment package which contains the CO's comments that both the NJP and 6105 during your previous enlistment are from the same incident.

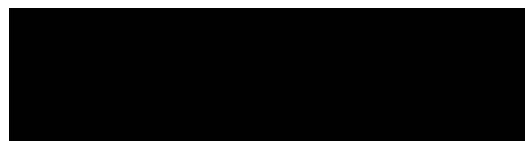
Due to the new statement and evidence, the Board carefully considered your reiterated contentions. The Board, however, substantially concurred with the 3 February 2022 AO. The Board specifically noted you do not deny the misconduct that led to your NJP and formal counseling. The Board also noted you were not co-located with the CO who administered the NJP and determined what you allege to be "forged" was not a material error requiring removal of the UPB entry but possibly a result of the CO's realization the third specification should not have been the subject of NJP because it was still under investigation. The Board concurred with the AO that the official UPB, with two specifications instead of three, is not material error or injustice.

The Board also concurred with the AO that the 31 May 2019 Page 11 counseling was not duplicative and its inclusion is proper and supported by the presumption of regularity. Due to the determination the NJP was appropriate, the Board concluded the related counseling and adverse fitness report should also remain in your Official Military Personnel File. Based on the available evidence, the Board also concluded there was insufficient evidence of an error or injustice to warrant removal of your failure of selection by the FY 2019 promotion selection board or to grant remedial consideration for promotion to Gunnery Sergeant.

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,

6/15/2022

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Deputy Director

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