



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

██████████
Docket No. 113-22
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.

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 application on 7 April 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 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 4 July 2018 Administrative Remarks (Page 11) 6105 counseling entry and associated rebuttal. The Board considered your contentions that the justification for the entry is fallacious in nature, you were not afforded the opportunity to address the issues with your chain of command, and when you attempted to address the issues with your leadership, the company first sergeant told you not to worry about it, that it will be addressed with the Commanding Officer (CO). You further contend that you were never provided a follow-up until you were called in by the CO to receive the adverse counseling. You assert the injustice has hindered your career and could possibly impact you staying in the Marine Corps.

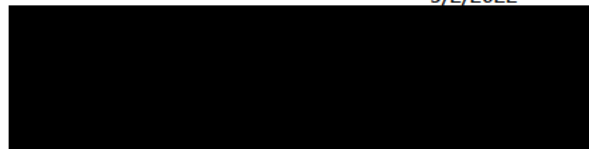
The Board noted that a Page 11 6105 counseling is given a presumption of regularity which requires you to provide substantial evidence that the CO's decision was unjust or was materially in error. The Board determined that you provided insufficient evidence to rebut this presumption of regularity. The Board took into consideration your rebuttal statement and the character letters you provided. However, the Board noted that you provided insufficient evidence that the adverse counseling was issued erroneously. The Board also noted the adverse fitness report you received in which you acknowledged the adverse action of the report and accepted the contributing role you played in the issue at hand. The Board thus determined that the Page 11 6105 counseling entry is factual as to the events that occurred.

By signing the Page 11 6105 counseling entry, your 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 the issuing officer was well within his discretionary authority to issue the counseling entry at the time, and that the entry met the counseling requirements in accordance with the Marine Corps Separations Manual. Specifically, 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, and your rebuttal was considered by the Board. The Board thus concluded that the Page 11 6105 counseling entry does not constitute probable material error or injustice warranting removal from your official military personnel file.

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,

5/2/2022

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Deputy Director

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