



The Board determined that by signing the Page 11 6105, your Commanding Officer (CO) indicated that he believed it to be appropriate based on the facts and circumstances while utilizing 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. In addition, you were afforded the opportunity to rebut the counseling.

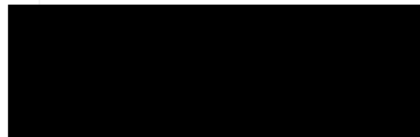
The Board noted that a Page 11 6105 counseling is given a presumption of regularity which requires you to provide substantial evidence that the CO's decision was unjust or was materially in error. The Board further noted that you provided insufficient evidence to rebut this presumption of regularity. The Board took into consideration the decision of the Superior Court of California to dismiss your case, but noted they did so after you successfully completed the terms of military diversion program, an alternative treatment program in lieu of trial. Additionally, although the criminal charges against you were dismissed, the Board determined that dismissal does not exonerate you of driving under the influence of alcohol and the Page 11 6105 is factual as to the events that occurred on that particular day. The Board also determined that your CO adhered to the requirements in accordance with the Individual Records Administrative Manual, and there is nothing that precluded your CO from issuing the counseling entry. 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.

With regards to your request for an ERSB, the Board concurred with the AO, and concluded that you failed to provide any evidence that would warrant forwarding your case for remedial consideration.

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,

5/19/2022

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Executive Director

Signed by

A black rectangular redaction box covering the name of the Executive Director.