



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

██████████
Docket No. 274-22
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 12 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.

You presented as new evidence your retirement disapproval notification, permanent change of duty orders, Administrative Remarks (Page 11) counseling entry, your Basic Individual Record as of 20 September 2016, e-mail correspondence from the Assistant Branch Head, Enlisted Promotions Branch transmitted 29 April 2021, and your fitness report for the reporting period 1 July 2015 to 30 April 2016. Although the Board determined that some of your evidence was not new, it was nevertheless considered in the context of clarification of your contentions. In light of this, the Board carefully considered your request to convene a FY 2017 Sergeant Major (SgtMaj)/E-9 Enlisted Remedial Selection Board (ERSB), that all systems and documents reflect your promotion to SgtMaj, and that you receive all pay and allowances retroactive to the date of promotion. The Board carefully considered your contention that errors in your official military personnel file (OMPF), which were considered by the FY 2017 SgtMaj Promotion Selection Board (PSB), prevented your selection to SgtMaj.

The Board considered that previous panels of this Board removed adverse materiel from your record but denied your request for remedial promotion consideration (Docket No. 8736-19 and Docket No. 3380-21, respectively). You argue that derogatory material considered by the FY

2017 [REDACTED] [REDACTED] has since been removed from your OMPF, therefore your request for remedial promotion consideration is warranted. You also argue that you are a victim of reprisal.

Unfortunately, the Board disagreed with your rationale for relief and concluded that your requested relief is not warranted. In this regard, the Board noted that the FY 2017 SgtMaj [REDACTED] convened on 19 October 2016 and adjourned on 8 December 2016. You were considered above the promotion zone and failed selection. Records indicate that review of your adverse fitness report by the Third Officer [REDACTED] was not complete until 29 January 2017, well after the 8 December 2016 adjourn date of the FY 2017 SgtMaj [REDACTED]. Even assuming *arguendo*, without conceding, that adverse material was considered by the FY 2017 SgtMaj [REDACTED], the Board determined that it would not have deprived you of a fair and impartial consideration, especially when considering the fact that you incurred your first failure of selection by the FY 2016 SgtMaj [REDACTED]—a year prior to inclusion of the now-removed derogatory material from your OMPF. The Board thus determined that you failed to demonstrate by a preponderance of evidence standard, that your failure of selection by the FY 2017 SgtMaj [REDACTED] was a result of derogatory material in your OMPF.

The Board also noted that completion of a retirement pre-application checklist is required when requesting retirement, which you submitted prior to the convening of the FY 2017 SgtMaj [REDACTED], where you acknowledged that your request for retirement would cause your deletion from promotion eligibility. Initially, your request to retire, which was well outside of the 14-month window for retirement requests, was denied and you remained eligible for promotion consideration. In requesting retirement, you acknowledged that “if selected for promotion and my name is on a promotion selection list, my request for retirement or transfer to the FMCR will result in the removal of my name from that list.” The Board noted that you also state in your petition that “it was my intention to request for a retirement date of 20181104” and that you were granted a retirement date of 31 January 2017; neither retirement date would have given you sufficient time in grade per the Separation and Retirement Manual (MCO 1900.16), which states “. . . Marines in the grade of gunnery sergeant or above *must serve two years in their current grade before transfer to the FMCR*” (emphasis added).

The Board determined that the preponderance of evidence demonstrates your intent to retire prior to the convening of the FY 2017 SgtMaj PSB, knowing that doing so would make you ineligible for promotion consideration, that your request for retirement was also submitted prior to adverse material being inserted into your OMPF, after having failed selection to SgtMaj the year prior, and with full knowledge that you chose a retirement date that fell short of the required two-year time in grade requirement, had you been selected for promotion. Moreover, per the Marine Corps Promotions Manual, Volume 2, Enlisted Promotions (MCO P1400.32D), “Marines who have been . . . transferred to the Fleet Marine Corps Reserve . . . are not eligible for consideration by the ERSB.” The Board thus determined that, in light of the foregoing, the convening of a FY 2017 SgtMaj [REDACTED] is not warranted.

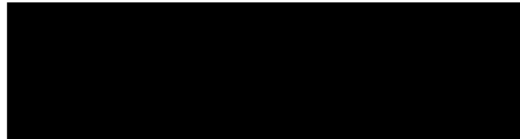
You also indicate in block 13 of your application that you are the victim of reprisal. The Board, however, determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC 1034. 10 USC 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy’s follow-

on corrective or disciplinary actions are at issue. Additionally, in accordance with DoD policy you have the right to request review of the Secretary of the Navy's decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a *de novo* review and under 10 USC 1034(c) the Secretary of Defense cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Office of Legal Policy, 4000 Defense Pentagon, Washington, DC 20301-4000. Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and, a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the BCNR, therefore, please also include previously presented documentation that supports your statements.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely, _____

6/16/2022

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Deputy Director

Signed by: _____