

DEPARTMENT OF THE NAVY

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

> Docket No. 494-22 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 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 application, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations and policies, as well as the 22 February 2022 Advisory Opinion (AO) provided by the Headquarters Marine Corps Military Personnel Law Branch (JPL). The AO was provided to you on 2 March 2022. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

The Board carefully considered your request to remove your 29 September 2020 Administrative Remarks (Page 11) 6105 counseling entry. Although you did not provide any contentions as to why you believe the record to be in error or unjust, the Board considered the 5 August 2021 letter from the Acting Commanding Officer, 12th Marine Corps District in support of your request as well as the Criminal History Clearance Form from the Office of the Attorney General of which indicates that as of the 23 June 2021 search, you had no criminal record.

The Board, however, substantially concurred with the AO. Specifically, that neither you nor the Acting Commanding Officer demonstrated why the 6105 counseling entry was issued in error or was unjust. As such, the Board determined that, by signing the 6105 counseling, your Commanding Officer indicated that he believed it to be appropriate based on the facts and circumstances, and using a preponderance of the evidence standard, substantiated your noted deficiencies as a result of a command investigation. The Board thus determined that the issuing officer was well within his discretionary authority to issue the 6105 counseling entry, and that the entry met the 6105 counseling requirements detailed in the Marine Corps Separations

Manual. The Board noted you chose to submit a rebuttal statement; however, after review of your official military personnel file (OMPF), there was no record of the statement nor did you attach it to your application.

The Board noted that a 6105 counseling is given a presumption of regularity which requires you to provide evidence that the commander's decision was unjust or was materially in error. The Board further noted that you did not provide sufficient evidence to rebut this presumption of regularity. Furthermore, the Board noted you received an adverse fitness report for the reporting period in which you acknowledged the adverse nature of the report due to the issuance of the contested Page 11 6105 counseling, and that you took full responsibility for your actions. The Board thus concluded that the Page 11 6105 counseling entry does not constitute probable material error or injustice warranting removal from your OMPF.

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.

