



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

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Docket No. 4936-22
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 applications on 18 October 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, as well as the 8 September 2022 Advisory Opinion (AO) provided by Headquarters Marine Corps Military Personnel Law (JPL) Branch. The AO was provided to you on 9 September 2022. Although you were given 30 days in which to submit a response, you chose not to do so.

The Board carefully considered your request to remove your Administrative Remarks (Page 11) 6105 counseling entry dated 17 July 2020, and your Fitness Report (Fitrep) for the reporting period 28 June 2020 to 5 August 2020 from your official military personnel file (OMPF). The Board considered your contentions that you did not violate any rules by having alcohol in your barracks room during the restriction of movement quarantine period and there were no guidelines that prohibited staff non-commissioned officers (SNCOs) from being able to drink prior to, and while in, quarantine, nor the amount or type of alcohol that SNCOs may possess.

By signing the Page 11 6105 counseling entry, your Commanding Officer (CO) indicated that he believed it to be appropriate based on your student status, your intoxicating state while reporting to a formal school, the facts and circumstances of your actions, 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, and that the entry met the counseling requirements pursuant to paragraph 6105 of the Marine Corps Separations and Retirement

Manual. 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 the Board considered your rebuttal statement.

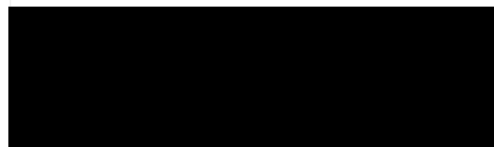
The Board noted that a Page 11 6105 counseling is given a presumption of regularity which requires you to provide sufficient evidence that the commander's decision was unjust or was material in error. The Board concurred with the AO in that you did not provide sufficient evidence to rebut this presumption of regularity. Although you contend you did not violate the Battalion Order, the Board felt that your actions, while in an intoxicated state, was behavior that was unacceptable because you were a SNCO and attending the Recruiter's School. The Board thus concluded that the Page 11 6105 counseling entry does not constitute probable material error, substantive inaccuracy, or injustice warranting removal from your OMPF.

With regards to the removal of your Fitrep, the Board noted that pursuant to the Performance Evaluation System (PES) Manual, Marines must submit their request to the Manpower Management Division Records and Performance Branch (MMRP-30) and not directly to this Board. The Board thus concluded that you did not exhaust all administrative remedies pursuant to PES Manual guidance, and recommended that you submit your request to MMRP-30 for 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,

11/7/2022



Executive Director

Signed by 