



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

█
Docket No. 4971-22
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 30 August 2022. The names and votes of the members of the panel will be furnished upon request. Your allegations of 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 29 June 2022 decision by the Marine Corps Performance Evaluation Review Board (PERB), and the 20 April 2022 Advisory Opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30). The PERB decision and the AO were provided to you on 29 June 2022. Although you were given 30 days in which to submit a response, you chose not to do so.

The Board carefully reviewed your request to remove your unit punishment book (UPB)/non-judicial punishment (NJP) held on 19 July 2021. You also request to remove your Administrative Remarks (page 11) 6105 counseling entry dated 31 August 2021, your page 11 non-recommendation for promotion entry dated 31 August 2021, and your Fitness Report (Fitrep) for the reporting period 1 April 2021 to 19 July 2021. The Board considered your contentions that you upheld your promise to accept and plead guilty at NJP, and further waived your administrative discharge board (ADB) in exchange for a recommendation of a General (Under Honorable Conditions) (GEN) characterization of service (COS) from the Commanding Officer (CO), █. The Board further considered your contentions that the subsequent CO recommended an Other Than Honorable (OTH) COS, therefore breaking the contract previously formed.

With regards to your NJP, the Board noted that you received NJP for violation of four specifications of Article 92, UCMJ and one specification of Article 134, UCMJ. Specifically, violating an order or regulation by engaging in inappropriate conduct with poolees and applicants, and participating in a live stream sexual video with a potential applicant, respectively. The Board noted, too, that you acknowledged your Article 31, UCMJ Rights, you accepted NJP, you certified that you were given the opportunity to consult with a military lawyer, you acknowledged your right to appeal, and you elected not to appeal your CO's finding of guilt at NJP. The Board, however, determined that your contention that the CO did not honor the fast-track agreement recommending you for a GEN COS in exchange for your guilty plea at NJP and waiver of an ADB lacks merit. The Board further determined that the agreement you entered into with the CO is non-binding on the separation authority who retains the authority to award an OTH regardless of the CO's agreement with you to recommend a GEN COS. As such, the Board concluded that the NJP is valid and conducted in accordance with the Manual for Court-Martial (MCM) (2019 ed.).

Moreover, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. In this regard, the Board noted that you did not dispute the facts of the NJP or claim a material error or injustice. The Board, therefore, found you failed to overcome this presumption. Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action for the removal of your UPB/NJP from your official military personnel file (OMPF).

The Board determined that your page 11 entries are valid as written. In this regard, the Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a page 11 entry on 31 August 2021 counseling you for violating an order or regulation and indecent conduct by engaging in several inappropriate relationships with prospective recruit applicants and poolees and, wrongfully engaging in extramarital conduct. The Board also noted that you acknowledged the entry and elected not to make a statement. The Board determined that you were properly counseled and the contested entry was written and issued according to the MARCORSEPMAN. Specifically, the entry provided written notification concerning your deficiencies, specific recommendations for corrective action, where to seek assistance, the consequences for failure to take corrective action, and it afforded you the opportunity to submit a rebuttal. Moreover, your CO signed the entry, and determined that your misconduct was a matter essential to record, as it was his/her right to do.

The Board noted that pursuant to the Marine Corps Enlisted Promotions Manual you were issued a page 11 entry on 31 August 2021 as notification that you are not recommended for promotion to the next higher grade. You acknowledged the entry, however, failed to select whether you chose to submit a statement or not. The Board also determined that the page 11 entry was written, issued and filed in your record according to the Marine Corps Individual Records Administration Manual (IRAM). In addition, the Board noted that you did not contest the entries based on any material error or injustice.

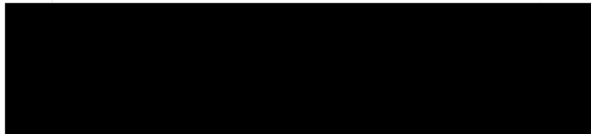
With regards to the removal of your Fitrep, the Board substantially concurred with the AO and the PERB decision that the Fitrep is valid as written and filed, in accordance with the applicable Performance Evaluation System Manual guidance. The Board noted that the adverse nature of the contested Fitrep was based on your finding of guilt at NJP, to which you accepted the outcome of the CO's finding of guilt and, given the opportunity to submit a statement to rebut the adverse nature of the Fitrep, you chose not to do so.

Based on these factors, the Board concluded that your request is lacking in sufficient evidence of probable material error, substantive inaccuracy, or injustice warranting corrective action for the removal of your Fitrep, counseling entries, or NJP from your OMPF. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

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,

9/25/2022



Executive Director

Signed by:

