



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

██████████
Docket No. 5335-22
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 5 December 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 21 September 2022 Advisory Opinion (AO) provided to the Board by Headquarters, Marine Corps, Military Personnel Law Branch (JPL). The AO was provided to you on 22 October 2022, and you were given 30 days, plus an extension, in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

The Board carefully considered your request to remove your 11 April 2022 6105 counseling entry. The Board considered your contention that you believe there are grounds for removal due to the presence of erroneous information and the manner in which it was carried out. You provided a copy of your permanent change of station orders and dependency application to support your contention.

The Board concurred with the AO, and determined by signing the counseling entry, your commanding officer (CO) indicated that he believed it to be appropriate based on the facts and circumstances, 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 at the time, and that the entry met the counseling requirements in accordance with the Marine Corps Individual Records Administration Manual and Marine Corps Separation and Retirement Manual. Specifically, the Board noted that the entry provided written notification concerning your deficiencies, specific recommendations for corrective action indicating any assistance

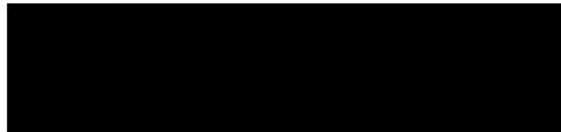
available, a comprehensive explanation of the consequences of failure to successfully take the recommended corrective action, and a reasonable opportunity to undertake the recommended corrective action. Furthermore, although you were afforded the opportunity to rebut the counseling, you chose not to do so.

The Board noted that a counseling entry is given a presumption of regularity which requires you to provide sufficient evidence that the CO's decision was unjust or was materially in error. The Board determined that you provided insufficient evidence to rebut this presumption of regularity. In this regard, the Board took into consideration your statement, as well as the documents you provided, however, determined that the counseling entry was factual at the time of issuance and there is nothing that precluded your CO from issuing the counseling entry. Furthermore, you provided no evidence to support your contention that the counseling entry contained erroneous information. As such, the Board concluded that the counseling entry does not constitute probable material error, substantive inaccuracy, or injustice warranting removal from your official military personnel file.

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,

12/20/2022

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Deputy Director

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