



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



Docket No: 5789-22
Ref: Signature Date



Dear Petitioner:

This letter is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 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.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

On 21 June 2021, you received non-judicial punishment (NJP) for violation of the Uniform Code of Military Justice (UCMJ) Article 134 (General Article) for failing to ensure the individual verifying your Combat Fitness Test (CFT) was accurately counting the ammunition can lift (AL) repetitions during the CFT thus resulting in an inaccurate score being submitted. You were assigned forfeiture of \$2519 pay per month for 2 months and 45 days restriction/extra duty with all your punishment suspended. Prior to the imposition of NJP, you were advised of your rights under Article 31, UCMJ, given the opportunity to consult with a military lawyer, and advised of your right to demand trial by court-martial in lieu of NJP.

The Board carefully considered your request to have your NJP removed. The Board considered your contention that the punishment was based upon an inconclusive command investigation and

that MCO 6100.13 does not specify that it is the responsibility of the person conducting the event to count his or her own repetitions. The Board also considered your argument that you retook the CFT two weeks later and passed with a higher score. Finally, the Board considered your claim that you were racially targeted by two Marines who provided inconsistent statements.

With regard to your contention that the punishment was based upon an inconclusive command investigation, the Board disagreed with your assessment based on the opinion of the investigating officer (IO) that, more likely than not, you lied about your scores on the CFT. The Board further noted that the IO recommended Battalion level NJP for your conduct.

Regarding your contention that MCO 6100.13 does not specify that it is your responsibility to count ammunition can repetitions, the Board determined that it is the responsibility of the Force Fitness Instructor (FFI) or Command Physical Training Representative (CPTR) to ensure proper techniques are employed and that they are responsible for calling out each repetition for the AL and time passed for all events. However, the Board also determined that the order does not say that they cannot delegate this responsibility down to the person executing the CFT. Therefore, absent additional evidence, the Board determined the preponderance of the evidence does not relief based on this argument.

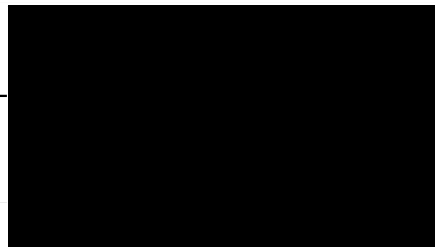
Further, the Board considered your assertion that you scored higher on a subsequent CFT. However, the Board noted that there is no evidence that you took a subsequent CFT and performed more repetitions. Additionally, the Board was not persuaded by your argument that a subsequent CFT result would exclude the possibility of lesser performance on an earlier day.

Finally, you claim to have been racially targeted by two junior Marines, however, you did not provide any evidence to support this claim. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. 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,

9/20/2022

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