



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

██████████
Docket No. 6438-22
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 31 January 2023. 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 November 2022 Advisory Opinion (AO) provided by the Headquarters Marine Corps Military Personnel Law Branch (JPL). The AO was provided to you on 21 December 2022, and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

The Board carefully considered your request to be promoted to Corporal (Cpl) with an effective date of rank of 1 October 2020, with back pay up until your separation on 5 August 2022. The Board considered your contention that you had the composition score and you completed all professional military education requirements as of 1 October 2020. You assert that you did not get promoted due to being falsely and wrongfully accused of rape, and that legal action was dismissed due to lack of evidence. You also assert that you were supposed to get promoted at the time your contract ended.

The Board, however, substantially concurred with the AO. In this regard, the Board noted that the decision to promote Marines to the grades of Private First Class through Sergeant rests solely with commanders, and, in the opinion of commanders, a Marine will not be promoted if he or she is not capable of performing satisfactorily in the higher grade. The Board further noted your promotion restriction was based on your pending legal action, and the commander was authorized to restrict your promotion while in that status. In addition, the commander can issue

an original date of rank where the Marine was exonerated of all wrongdoing. Even though you assert you were wrongfully accused and the legal action was dismissed due to lack of evidence, you were not exonerated of all wrongdoing. As a matter of fact, the Sexual Assault Initial Disposition Authority determined there was probable cause that you did commit sexual assault. The Board was not convinced that promotion to the next higher grade was warranted, especially in light of you receiving two additional counseling entries while in the promotion-restriction status. The Board thus concluded that your request is lacking in sufficient evidence of material error, substantive inaccuracy, or injustice, warranting promotion to Cpl and receiving back pay from 1 October 2020 to 5 August 2022.

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,

3/1/2023

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