



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

█  
Docket No. 7129-22  
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 25 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.

The Board carefully considered your request to remove your Administrative Remarks (Page 11) 6105 counseling entry dated 18 November 2021 and the associated rebuttal. The Board considered your contentions that the Page 11 entry is an unjust representation of your character, contains false information, and has had an adverse effect on your career. You argue that while the Page 11 is administratively and procedurally correct, and you do not contest the Commanding Officer's (CO) authority, the justification for issuance is unjust. Specifically, that the allegations were never brought forth against you for making unauthorized physical contact, the command investigation did not substantiate misconduct against you, and, when you refused nonjudicial punishment and requested trial by court-martial, the command took 6 months to determine that charges would not be preferred.

The Board agreed with your assessment that the Page 11 6105 is administratively and procedurally correct. By signing the Page 11 6105, your 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

(IRAM) 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. You were afforded the opportunity to rebut the counseling, and your rebuttal was considered by the Board.

The Board noted that a Page 11 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 command investigation you provided. However, the Board determined that the Page 11 was factual at the time of issuance and there is nothing that precluded your CO from issuing the counseling entry. Specifically, the Board noted that the investigating officer (IO) concluded that you were in direct violation of the Depot Order for conducting unauthorized and unlawful intensive training sessions, despite your contentions to the contrary. Furthermore, the CO concurred with the IO's findings, opinions, and recommendations, indicating that your misconduct clearly demonstrated an abuse of power, resulting in his loss of trust and confidence in your ability to perform your duties as a drill instructor.

With regards to your contention that charges were never preferred at a court-martial, the Board noted the correspondence from the Senior Trial Counsel and determined that the disposition of issuing you the Page 11 and relieving you for cause were appropriate alternative courses of action for the CO to hold you accountable for your actions. As such, the Board concluded that the Page 11 entry does not constitute probable material error, substantive inaccuracy or injustice warranting removal from your official military personnel file. 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,

11/20/2022

