



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

██████████
Docket No. 7356-22
Ref: Signature Date

██████████
██████████
██████████
██████████
██████████

Dear Petitioner:

This 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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 24 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. The Board also considered the Advisory opinions (AO) furnished by the Manpower Management Separation and Retirement Branch (MMSR-2) and Military Personnel Law Branch (JPL), as well as your 29 December 2022 response to the AOs.

The Board carefully considered your request to remove your 21 March 2019 nonjudicial punishment (NJP), the 22 March 2019 Administrative Remarks (Page 11) 6105 and promotion-restriction counseling entries, as well as your request to change your reenlistment code from RE-3C to RE-1C and approve you for a Temporary Early Retirement Authority (TERA) retirement. The Board considered your contention that the charge of driving under the influence (DUI) was dismissed by the civilian court of jurisdiction. The Board also considered your claim that the RE-3C code improperly identified you as a conscientious objector. Finally the Board considered your assertion that you were erroneously denied a TERA retirement, and without explanation, despite being eligible.

The Board, however, substantially concurred with the AOs' recommendation that your petition be denied. In this regard, the Board noted that on 21 March 2022 the Commanding Officer (CO) imposed NJP on you for violation of Articles 92, Article 113 of the Uniform Code of Military Justice for driving drunk and in a reckless and wanton manner. You acknowledged your Article 31(b) rights, your right to refuse NJP and demand trial by court-martial in lieu of NJP, your right to consult with a military lawyer, and your right to appeal the NJP. You agreed to accept NJP, and you did not appeal. Although the DUI charge was dismissed by the civilian court of jurisdiction, the Marine Corps had clear jurisdiction over the alleged offenses, and it was within your CO's discretionary authority to impose NJP. Further, the Board determined that you did not provide sufficient evidence to demonstrate how the civilian court's dismissal would render the NJP erroneous.

The Board determined the 6105 counseling entry creates a permanent record of matters your CO deemed significant enough to document. The Board also determined the entry met the 6105 counseling requirements detailed in MCO 1900.16 (MARCORSEPMAN). Specifically, the Board noted 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. Further, the Board noted the counseling entry was appropriately issued by the CO, who was within his discretionary authority to do so. Although the counseling indicates you were given due process rights, you elected not to exercise them.

Regarding your claim that the RE-3C code improperly identified you as a conscientious objector, the Board noted this claim was factually incorrect and that Appendix (f) of the MARCORSEPMAN directs the assignment of RE-3C "when directed by the Commandant of the Marine Corps or when not eligible and a disqualifying factor is not covered by any other code." In this regard, the Board noted that you were properly counseled that you were not eligible for reenlistment due to having a 2019 DUI on record.

In regards to your request to have the Board considered your request for TERA based upon your prior application, the Board determined that in accordance with MARADMIN 062/15 announcing the Fiscal Year (FY) 2016 TERA program does not create an automatic entitlement to retire eligible Marines. Specifically, it states that commanders are responsible for human resource management and that major subordinate commands must ensure the approval of requests do not reduce staffing below 80 percent of the table of organization and 70 percent of the primary military occupational specialty of the Marine requesting TERA. The Board also noted the 20 May 2022 e-mail where your monitor informed you that your TERA was denied because of the needs of the Marine Corps. The Board determined this aligned with the CO's requirement to maintain a certain staffing goal as determined by the Marine Corps. Finally, the Board noted that between FY 2016 and 2019 you only submitted for TERA once in 2016.

Concerning your request to remove your fitness report for the reporting period 11 March 2019 to 21 March 2019, the Board determined that you have not exhausted your administrative remedies. The Headquarters Marine Corps Performance Evaluation Review Board (PERB) is

the initial action agency for fitness report appeals, therefore, you must submit your request to the PERB in accordance with the Marine Corps Performance Evaluation System Manual. In view of the foregoing, the Board thus concluded that there is no probable material error or injustice warranting the requested 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,

2/23/2023

