



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

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Docket No. 8728-22
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.

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 21 March 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 31 January 2023 advisory opinion (AO) furnished by the Marine Corps Military Personnel Law Branch (JPL). The AO was provided to you on 3 February 2023, and you were given 30 days 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 update your record to reflect the proper actions supported by the 21 October 2016 unit punishment book/non-judicial punishment (UPB/NJP) and 21 October 2016 Administrative Remarks (page 11) entries. The Board considered your contentions that the UPB was improperly completed and unfinished, specifically, it states that you were pending NJP but did not give a specific occurrence. You also contend that the page 11 entry not recommending you for promotion indicates that you were not recommended for promotion to corporal (Cpl/E-4) although you were reduced in rank to private first class (PFC/E-2).

The Board, however, substantially concurred with the AO. In this regard, the Board noted that you received NJP for violating Article 92, Uniform Code of Military Justice (UCMJ) for failing to obey an order or regulation. The Board also noted that you accepted NJP, acknowledged your Article 31, UCMJ Rights, certified that you were given the opportunity to consult with a military lawyer, acknowledged your right to appeal, and you elected not to appeal your commanding officer's (CO) finding of guilt at NJP. The Board noted, too, that the Legal Support and Administration Manual did not require your CO to specify the specific basis for your Article 92, UCMJ violation on the UPB. The Board found no evidence that you were not aware of the basis for the Article 92 violation and you provided none. The Board determined that the UPB was completed according to regulations and that your NJP was conducted pursuant to the *Manual for Courts-Martial* (2019 ed.).

The Board noted that pursuant to the Marine Corps Separation and Retirement Manual and Marine Corps Enlisted Promotions Manual you were issued a page 11 entry for receiving NJP and an entry notifying you that you are not recommended for promotion to Cpl due to your NJP. The Board also noted that you reviewed and acknowledged the page 11 entries, and elected not to make a statement. The Board determined that the grade 'Cpl' instead of 'LCpl' is a scrivener's error. The scrivener's error is not considered a material error because the error did not prejudice you in any way and had no bearing on the outcome of your NJP or promotion restriction. The Board also determined that the administrative error does not invalidate the page 11 entry. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action. Accordingly, 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,

3/31/2023

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Deputy Director

Signed by: █