



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

█  
Docket No. 9177-22  
3911-20  
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 9 February 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 applications, for the current case as well as Docket No. 3911-20 for which you sought reconsideration, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations and policies, as well as the 3 December 2020 Advisory Opinion (AO) provided to the previous Board by the Headquarters Marine Corps Military Personnel Law Branch (JPL) and your rebuttal statement dated 14 January 2021, both of which were previously considered.

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

The Board carefully considered your request to correct your Official Military Personnel File (OMPF) by removing the 11 June 2019 6105 counseling entry.

The Board noted your previous submission, Docket No. 3911-22, requested removal of the counseling entry and the associated rebuttal. The previous Board denied all requested relief. Specifically, the previous Board substantially concurred with the AO and determined the counseling entry did not address the Marine Corps Prohibited Activities and Conduct (PAC) Order but rather addressed your violation of Article 115, Uniform Code of Military Justice which you admitted to violating in your rebuttal statement.

In your current request, you have submitted new evidence in the form of a letter from Commanding Officer (CO), [REDACTED], requesting “set aside” of the Page 11 6105 counseling entry. The CO stated that “upon further review of the events of 11 June 2019” he determined the verbiage contained within the counseling was “incorrectly used to address the deficiency.” The CO further stated the use of a counseling entry was “disproportionate” and that he did not “see” a violation of the PAC order or a reason to “justify” a 6105 counseling. The Board carefully considered your contention that “in accordance with paragraph 0018 of MCO 5800.7F and the approved set aside request,” the counseling entry should be removed from your record.

Upon review and consideration of all the evidence of record, this Board affirmed the previous Board’s determination that the 11 June 2019 counseling entry and associated rebuttal should remain in your record. The Board noted the CO requesting the set aside is not the same CO that issued the 6105. The Board was unable to locate “paragraph 0018 of MCO 5800.7F,” but, noting the context, assumed you were referring to JAGINST 5800.7F paragraph 0118, which addresses set aside of nonjudicial punishment. The Board considered your implied contention that the reference allows the successor in command to also set aside a 6105 counseling but determined the reference is not applicable.

Looking closely at the contested counseling entry and your rebuttal, this Board again determined the counseling entry addressed your violation of Article 115 which you admitted to violating in your rebuttal statement. Further, the Board concurred with the previous Board’s determination that the entry, which met the 6105 requirements detailed in MCO 1900.16 (MARCORSEPMAN), creates a permanent record of a matter your CO deemed significant enough to document. Additionally, 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 failing to successfully take the recommended corrective action, and a reasonable opportunity to undertake the recommended corrective action. Noting you also were afforded the opportunity to rebut the counseling, of which you fully availed yourself, the Board concluded there is insufficient evidence of an error or injustice warranting removal of the counseling entry from your OMPF.

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,

3/8/2023

[REDACTED]

Deputy Director

Signed by: [REDACTED]