



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. 9490-22
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 2 May 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, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies, as well as the 17 February 2023 Advisory Opinion (AO) provided to the Board by Headquarters Marine Corps (HQMC), Military Personnel Law Branch (JPL). The AO was provided to you on 21 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 chose not to do so.

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

The Board carefully considered your request to remove your Administrative Remarks (Page 11) 6105 counseling entry and Page 11 entry, both dated 22 July 2021. The Board further considered your request to reconsider the delivery of promotion to █ if both entries are removed. The Board considered your contentions that the Page 11 entries are falsified documents that was not physically signed by you nor the commanding officer (CO) of █; the CO that delivered the administrative Page 11 entries was the succeeding CO; and the Page 11 entries were done as a reprisal against you for an Article 138 submitted against the CO during the time frame for not affording you due process. You also

contend that you requested mast to the commanding general, [REDACTED] to rectify this situation, but was not afforded to speak to him to address your concerns. Additionally, your rebuttal statement to the Page 11 entries was documented on a single document and was not submitted into your service record. You claim you were not afforded a fair and timely due process as the events spanned from January 2021 to December 2021 and you addressed your concerns to HQMC of the multiple delays and of the missing statements. You assert you have witnesses that can attest to the facts mentioned and, as a result of this injustice, your promotion to [REDACTED] was withheld.

With regard to your 6105 counseling entry, the Board concurred with the AO, and determined that by signing the entry, your CO indicated that he believed it to be appropriate based on the facts and circumstances derived from the command investigation, and using a preponderance of the evidence standard. In this regard, the Board thus determined that the issuing officer was well within his discretionary authority to issue the 6105 counseling entry at the time, and that the entry was in accordance with policy in the Marine Corps Individual Records Administration Manual 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. Although you indicated your desire to submit a rebuttal, it was not included in your application.

With regard to your Page 11 entry notifying you that the CO would recommend that your appointment to [REDACTED] be revoked, the Board also concurred with the AO and concluded that the CO's action was in accordance with the Marine Corps Enlisted Promotion Manual.

The Board noted that a Page 11 entry 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 documents you provided; however, determined that the Page 11 entries were factual at the time of issuance, you provided no evidence that the CO use the Page 11 entries as reprisal against you, and there is nothing that precluded your subsequent CO, upon assuming command, from issuing and signing the entries, which he had the authority to do.

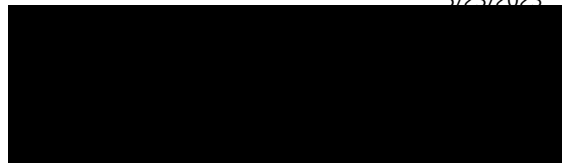
With regard to your contention that your rebuttal statement was not included in your official military personnel file (OMPF), the Board noted your statement to the [REDACTED] [REDACTED] dated 3 August 2021 addressing your promotion recommendation. However, the Board concurred with the AO in that it could also not ascertain whether this statement was to be made a part of your rebuttal to your Page 11 entries. Nevertheless, as the AO opined, you were given an opportunity to respond to the command's recommendation, which was provided to the CMC and it is filed in your OMPF. As such, the Board concluded that both Page 11 entries do not constitute probable material error, substantive inaccuracy or injustice warranting removal from your OMPF. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

As previously discussed, the Board determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC 1034. 10 USC 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy's follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with DoD policy you have the right to request review of the Secretary of the Navy's decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a de novo review and under 10 USC 1034(c) the Secretary of Defense cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Office of Legal Policy, 4000 Defense Pentagon, Washington, DC 20301-4000. Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and, a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the BCNR, therefore, please also include previously presented documentation that supports your statements.

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,

5/23/2023

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Executive Director

Signed by:

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