



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

█
Docket No. 108-23
Ref: Signature Date

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Dear █

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 28 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, 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 6 May 2021. The Board considered your contention that while you were a student at █, you failed a portion of the physical fitness test (PFT); however, prior to leaving for school, you passed a PFT but injured your left shoulder. When asked by personnel at the █ if there was any reason why you could not pass or complete any portion of the PFT, you believed you would be able to pass despite your injury. Instead, you failed the pull-up portion and was subsequently dropped from school. You admit that you should have spoken up and assert that when you returned to your parent command, the doctors found out that you had a traumatic left rotator cuff strain and an incomplete acute traumatic tendinitis in your left shoulder and biceps. You subsequently attended physical therapy for a month or two. You further assert that when you received orders to █ you were able to pass the PFT and combat fitness test with no issues. You provided medical and physical therapy copies of your visits to the █ to support your contentions.

The Board, however, determined that by signing the Page 11 6105, your commanding officer (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 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 were afforded the opportunity to rebut the counseling, you chose not to do so.

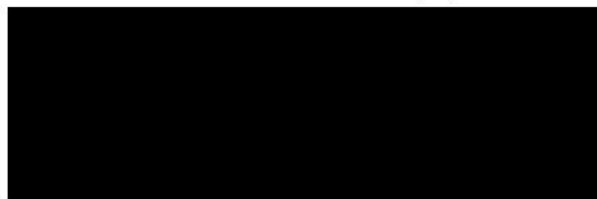
The Board noted that a Page 11 is given a presumption of regularity which requires you to provide sufficient evidence that the CO's decision was unjust or was materially in error. The Board determined that you provided insufficient evidence to rebut this presumption of regularity. In this regard, the Board took into consideration your contentions, as well as the documents you provided; however, 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. Furthermore, you provided no evidence to support your contention that the Page 11 contained erroneous information. Most importantly, you failed to provide any evidence that you injured your shoulder prior reporting to [REDACTED] and the injury contributed to your failure. The Board noted in your medical history that the injury is documented as being incurred two weeks prior to your medical appointment of 19 July 2021. Since this was well after your PFT failure documented by the May 2021 Page 11, the Board was not convinced that you were injured prior to taking the 4 May 2021 PFT. As such, the Board concluded that the Page 11 6105 counseling entry does not constitute probable material error, substantive inaccuracy or injustice warranting removal from your official military personnel file.

Finally, with regards to your notation on your application as "other mental health" issues, the Board noted that you did not provide evidence to support that you were suffering from mental issues nor did your documentary material in your OMPF indicate that you suffered from any mental health conditions that affected your PFT failure. 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,

3/21/2023

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