



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

██████████
Docket No. 905-23
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 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.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will 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 dated 12 October 2022 and associated rebuttal. The Board considered your contention that you are being framed by your command for committing recruiter malpractice by intentionally providing fraudulent educational documents in the enlistment processing of applicants that were not yours. You assert that you provided overwhelming amounts of evidence to your command to the contrary; however, when they tried to give you nonjudicial punishment, you denied it and was forced to sign the counseling entry. You further assert that the investigation did not conclude who provided the fraudulent documents, but items in your name were submitted on your behalf to the Military Entrance Processing Station without your consent or knowledge. You provided statements from other recruiters to confirm the office culture and an email from an applicant involved in the "fraudulent" documents investigation to support your contentions.

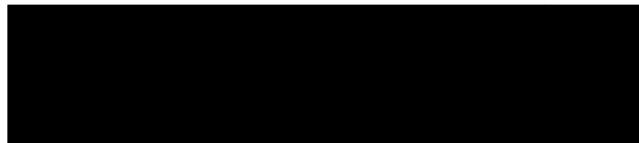
The Board, however, determined that by signing the Page 11 6105, your commanding officer (CO) indicated that he believed it to be appropriate based on the facts and circumstances, and using a preponderance of the evidence standard. The Board thus determined that the issuing officer was well within his 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. You were given the opportunity to rebut the counseling and you did 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 and your rebuttal statement, as well as the documents you provided; however, determined that the Page 11 was factual at the time of issuance and your CO did not abuse his discretion by issuing the counseling entry. Furthermore, you provided insufficient evidence that the Page 11 contained erroneous information. The Board noted the applicant's email, to which you assert was involved in the investigation, but could not ascertain the validity of the contents without details of the investigation the CO relied upon to determine you committed recruiter malpractice. 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. 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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Executive Director

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