



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

█  
Docket No. 1350-23  
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 30 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.

The Board carefully considered your request to remove an Administrative Remarks (Page 11) 6105 counseling entry dated 23 July 2022 and the adverse Fitness Report for the reporting period 1 October 2021 to 23 October 2022 from your Official Military Personnel File. You contend the 6105 counseling entry, which was issued for “not changing over in time” while assisting the new Master Sergeant (MSgt) during check-in processing, was unjustly issued by the Commanding Officer (CO). You specifically contend the CO treated you unjustly because you had requested mast in October 2021.

The Board noted you were counseled on 23 July 2022 for failing to obey a lawful order to change into the uniform of the day. Further, the Board noted the counseling specifically noted you and another sergeant in the administrative section were given the order, but only you remained in civilian attire. In your rebuttal to the counseling entry, the Board noted your explanation that you were “in a tough situation where [you] made the call to stay and assist” and your intentions were never to disobey the Captain but merely to avoid a pay-related issue for the MSgt. The Board considered your contention the counseling entry dated 23 July 2022 was the result of the CO treating you “unjustly” after your October 2021 request mast submission but determined there is insufficient evidence to support your contention the CO unjustly counseled you. In making this finding the Board considered that you do not dispute the incident for which you were counseled happened, and it occurred eight months after the resolution of the request mast.

Further, the Board determined the counseling entry creates a permanent record of matters your commanding officer deemed significant enough to document. The Board also determined the entry met the 6105 counseling requirements detailed in MCO 1900.16 (MARCORSEPMAN). Specifically, 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 failure to successfully take the recommended corrective action, and a reasonable opportunity to undertake the recommended corrective action. You were afforded the opportunity to rebut the counseling entry, which you availed yourself of by submitting a rebuttal on 29 July 2022. Further, the Board noted the counseling entry was appropriately issued by the CO as evidenced by his signature on the entry. The Board thus concluded there is insufficient evidence of material error or injustice warranting removal of the Page 11 6105 entry. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

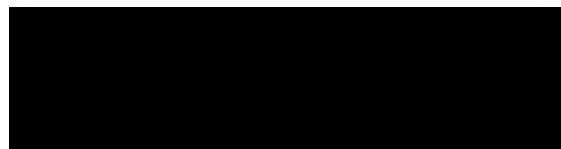
The Board did not consider your request to remove the fitness report for the reporting period 1 October 2021 to 23 October 2022. The Board noted that you have not exhausted your administrative remedies by first requesting the Performance Evaluation Review Board remove the adverse report.

Lastly, the Board noted you marked “reprisal/whistleblower” in block 14 of the DD Form 149, indicating you are the victim of reprisal. The Board, however, 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,

4/21/2023

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Deputy Director

Signed by: 