



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. 1767-23

Ref: Signature Date

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Dear █

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 4 April 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.

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 reinstate you to the rank of Master Gunnery Sergeant (MGySgt/E-9). The Board considered your contentions that you could not take the Permanent Change of Station (PCS) assignment based on your family situation. You contend that Headquarters Marine Corps (HQMC) forced your decision to retire and would not allow you to keep your rank because you did not have 2 years' time in grade. Finally, you claim that HQMC made the assignment based on personality and antiquated assignment policies, and you are being punished for their unwillingness to work with you.

However, the Board substantially concurred with HQMC decision. In this regard, the Board noted that pursuant to MCO 1300.8, personnel assignment policy, Marines eligible to

retire/transfer to the Fleet Marine Corps Reserve (FMCR) who are issued PCS orders, but who do not accept the orders, must request to retire/transfer to the FMCR. Further, the Board noted that pursuant to para 7004.5 of the Marine Corps Separations Manual, Marines in the grade of gunnery sergeant and above must serve two years in their current grade before transfer to the Fleet Marine Corps Reserve (FMCR), and that a waiver may only be approved by the Deputy Commandant, Manpower and Reserve Affairs. In this regard, the Board noted Director, Manpower Management disapproved your Time-In-Grade Waiver. The decision upon your refusal to execute orders and noted that, prior to the convening of the E-9 Board, all newly promoted MGySgt's were informed that they would be moving and if they didn't desire to move would need to submit for retirement. As a result, the Board was not persuaded by your arguments or the evidence your presented in mitigation. The Board determined that you provided no evidence that HQMC violated policy, nor proof that they acted for illegal or improper purposes. The Board thus concluded that your petition did not demonstrate probable material error, substantive inaccuracy, or injustice warranting your promotion to E-9. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. 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,

4/24/2023

