



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

██████████
Docket No. 2081-23
Ref: Signature Date

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Dear Petitioner:

This letter is in reference to your application for correction of his 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 that 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 18 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.

The Board carefully considered your request for promotion to the rank of Captain/O-3. The Board considered your contentions that you had never been informed of any problems related to your service as a Marine Officer, you were never informed of your failure to select until you failed to select the third time, that you were an excellent Marine with an exemplary record, and the Marine Corps destroyed your desire to continue to serve with the Marine Corps Reserve.

However, the Board determined insufficient evidence of error or injustice exists to promote you to the rank of Captain/O-3. In this regard, the Board noted that pursuant to Title 10, U.S.C. Section 6389, the number of officers serving in each rank is established by law. Therefore, promotion is dependent on the occurrence of a vacancy in the next higher rank. Since normal attrition does not create sufficient vacancies to permit promotion of all eligible officers, a system of forced attrition is essential. As a result, the law provides that officers not selected for promotion when due, be retired or discharged.

In your case, on 20 June 1973, the Commandant of the Marine Corps notified the Secretary of the Navy that you had twice failed selection for promotion to the next higher grade and would be involuntarily separated from the Marine Corps Reserve. Further, the Board noted that you

requested a waiver of current regulations at the time to allow you to continue to participate in the Class II program. However, on 27 June 1973, you were notified that your request was disapproved and you would be discharged on 30 June 1973.

The Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. In your case, the Board noted your record was considered at the highest levels of the Department of the Navy before a decision was made to discharge you based on your failures to select to O-3. Therefore, in the absence of substantial evidence, the Board determined the presumption of regularity applies in your case and you were properly not selected for promotion. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting your promotion to O-3. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

While the Board was unable to grant you the relief you requested, they greatly appreciate your Honorable and meritorious service to this country.

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 the submission of new matters, which will require that you 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,

5/12/2023

