



Record, Privacy Act Statement, no contact order, and the investigation question and answer form, in support of your contentions.

The Board, however, determined that by signing the Page 11, 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 rebutted the counseling and the Board took your statement into consideration.

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 based on a preliminary inquiry that substantiated your misconduct, and there is nothing that precluded your CO from issuing the counseling entry. Furthermore, the Board noted that in your rebuttal, you accepted the consequences of your action, took responsibility, and admitted that you realized the incident was inappropriate. Additionally, with regards to your contention that the investigating officer's failure to administer you your Article 31 rights before making a statement constituted a violation of your constitutionally rights, the Board determined that a Page 11 counseling is administrative in nature and the lack of warning is only relevant during nonjudicial punishment or court-martial proceedings. As such, the Board concluded that the Page 11 entry and your rebuttal, do 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,

6/2/2023



Executive Director

Signed by:

