



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. 3487-23
Ref: Signature Date

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Dear █

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 8 June 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, as well as the 23 April 2023 decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), and the 22 March 2023 advisory opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30). The PERB decision and AO were provided to you on 23 April 2023, and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

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 the fitness report for the reporting period 7 January 2021 to 15 March 2021, the Administrative Remarks 6105 (page 11) entry dated 2 November 2020, and rebuttal statement. You also request that your relief for cause be overturned and to restore your date of rank for promotion to Staff Sergeant (SSgt/E-6) effective 1 November 2020. The Board considered your contention that the counseling entry does not

match the dates of the fitness report reporting period. You claim the counseling entry was the result of an investigation into violations of the Recruit Training Order, the allegations were substantiated by the Commanding General (CG), and led to the Battalion Commanding Officer (CO) issuing the counseling entry. The CO directed you to return to work with your promotion to SSgt to be immediately reinstated. You also contend that you continued to work as a Drill Instructor with the trust and confidence of the CO until the decision for you to return to work was unjustifiably overruled by the CG. You further contend that the CG's decision that you not return to your duties as a Drill Instructor created undue command influence, which prevented a fair evaluation for you to return to work as a Drill Instructor. You also claim that the decision by the CO was overruled two months after you signed the counseling entry, resulting in your relief for cause (RFC).

The Board, however, substantially concurred with the AO and PERB's decision that your fitness report is valid and should be retained as filed. In this regard, the Board noted that you were issued a 6105 page 11 entry counseling you for violating the Recruit Training Order by making unauthorized physical corrections on multiple recruits and for violating the Regimental Bulletin concerning COVID-19 measures. On 11 February 2022 you were also issued a counseling entry notifying you of your RFC. The Board determined that your counseling entry was issued and written pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual. The Board also determined that your CO acted within his discretionary authority when issuing the counseling entry based on misconduct that was substantiated during a command investigation.

The Board noted that you were issued a counseling entry during the reporting period that relieved you for cause. The Board determined that the 11 February 2021 counseling entry was properly considered derogatory material. The Board also determined that you commingled the 6105 counseling entry with the entry relieving you for cause. The fact that a command investigation substantiated misconduct and you were relieved for cause constituted a sufficient basis for adversity and required that your fitness report be marked adverse according to the PES Manual. The Board further determined that your CG was well within his or her right to determine that your substantiated violations of the Recruit Training Order warranted your removal from duties as a Drill Instructor and your RFC.

Concerning your date of rank for promotion to SSgt, the Board found no evidence that you did not commit misconduct or that you were exonerated. According to the Marine Corps Enlisted Promotions Manual (MARCORENLPROMAN), promotions will not be backdated when a period of promotion delay has ended and the Commander subsequently recommends delivery of the promotion. In addition, after a delay, the Commandant of the Marine Corps (CMC) may authorize a new date of rank when the Commander certifies the Marine is qualified. The Board noted that during February 2021 after all investigations were closed, the CG recommended delivery of your appointment to SSgt. The Board determined that the CMC properly authorized your date of rank as 1 January 2021 according to the MARCORENLPROMAN. Accordingly, given the totality of the circumstances, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting 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,

6/13/2023

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Deputy Director

Signed by: █