



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. 5929-23
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.

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 applications on 30 January 2024. 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 applications, 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 Sergeant (Sgt)/E-5. The Board considered your contentions, in consideration of your promotion request, that the evidence will show results of an unwarranted competency review board while on limited duty, and awaiting results of the Physical Evaluation Board (PEB), and a detailed perspective of mistreatment from your Command during the PEB.

The Board, however, determined, upon review of your record, your Command followed appropriate protocols during the course of your assignment to the Body Composition Program (BCP). The Board found no error or injustice with the Competency Review Board (CRB) proceedings in which you were reduced in rank to Lance Corporal for professional incompetence, specifically, for lack of physical fitness and self-discipline. The Board noted that you were placed on BCP after you were evaluated by an appropriate medical officer and determined that no medical condition existed that would prevent you from losing weight. The Board therefore noted that the CRB and administrative separations proceedings were not in error, and you have not provided any evidence to the contrary. Moreover, 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. The Board, in making their decision, acknowledged your contentions and the evidence you provided and, despite your objections, concluded that your reduction in rank was supported by the evidence and determined you provided no evidence to show that you rated promotion to the rank of sergeant. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Regarding your request for a combat-related designation as part of your disability proceedings, the Board concluded you did not exhaust your administrative remedies. The Board found no evidence you appealed your PEB findings that concluded your disability condition did not result from a combat related injury as defined by Title 26, U.S. Code Section 104(b)(3). You may submit your request to:

Office of the Judge Advocate General
Administrative Law (Code 13)
Pentagon 4D641
1322 Patterson Ave, Suite 3000
Washington Navy Yard, DC 20374-5066

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,

2/28/2024

