

DEPARTMENT OF THE NAVY

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

> Docket No. 7337-23 Ref: Signature Date



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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your applications on 19 September 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 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 to remove your Administrative Remarks (Page 11) 6015 counseling entry dated 19 October 2017. The Board considered your contentions that you believe you were exonerated of all wrongdoing based on your promotion being backdated to the original date of rank. To support your contention, you provided an excerpt of the Marine Corps Individual Records Administration Manual, specifically referencing paragraph 1204.2, which indicates that a Marine who is/was in a promotion restriction status is issued the original date of rank when the Marine is subsequently exonerated of all wrongdoing. You also provided your fitness report (Fitrep) for the reporting period for consideration. You believe that based on this, you were exonerated and, therefore, the entry is invalid.

The Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a 6105 entry counseling you for your relief for cause for the Marine Security Guard Program for admitting that you paid other individuals to complete assignments for your off-duty education. The Board also noted that you acknowledged the entry and elected to submit a statement; however, there was no statement in your record nor

did you provide one in your application. The Board determined that the contested entry was written and issued according to the MARCORSEPMAN. Specifically, the entry provided written notification concerning your deficiencies, specific recommendations for corrective action, where to seek assistance, the consequences for failure to take corrective action, and it afforded you the opportunity to submit a rebuttal. Moreover, your commanding officer (CO) signed the entry, and he/she determined that your misconduct was a matter essential to record, as it was his/her right to do. The Board determined that your CO acted properly and within his discretionary authority when determining that your misconduct warranted the page 11 entry. 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 the evidence you provided and, despite your objections, determined that the counseling entry is valid. The Board noted your date of rank to Staff Sergeant; however, determined that based on your admission of committing the misconduct, as evidenced in the Page 11 and Fitrep you provided, and lack of evidence to the contrary, there is insufficient evidence you were exonerated or to suggest that the basis of the Page 11 was erroneous, inaccurate, or unjust at the time of issuance. The Board, therefore, found your evidence insufficient to overcome the presumption of regularity in your case. As a result, the Board concluded that there is no probable material error, substantive inaccuracy or injustice warranting removal of the Page 11 from your record. 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.

