



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. 7895-23
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your applications on 17 October 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.

Regarding your request for a personal appearance, the Board determined that your personal appearance, with or without counsel, would 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 your 8 March 2019 Administrative Remarks (page 11) 6105 counseling entry. You also request remedial consideration for promotion to gunnery sergeant/E-7 for fiscal year (FY) 2021. The Board considered your contentions that relief is warranted because there was no investigation or evidence of any wrong doing, you were issued the counseling entry before the civilian legal action was finished, the civilian legal action was subsequently dismissed, you did not receive an adverse fitness report, and you successfully completed recruiting duty. You claim that you received a commendatory fitness report after receiving the counseling entry, and you have statements from the command stating that there are no records of an investigation regarding the incident. You believe that you have been passed over multiple times for promotion because of an issue that did not exist. As evidence, you provided a correspondence from the issuing officer requesting that your counseling entry be removed due his evaluation of your character and lack of evidence of wrong doing.

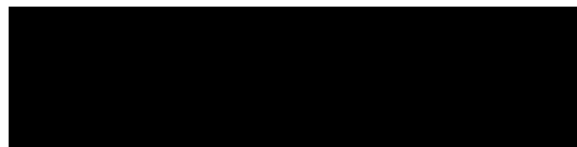
The Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were counseled for cultivating a relationship with a Poolee, which was contrary to good order and discipline. The Board also noted that you acknowledged the entry and elected not to submit a statement. 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 also determined that your CO acted properly and within his/her discretionary authority when determining that your misconduct warranted the counseling 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 determined that there is no requirement for an investigation or civil conviction to issue a counseling entry. The Board further noted that you provided no evidence that you were exonerated or to suggest that the basis of the counseling entry was erroneous, inaccurate, or unjust at the time of issuance. The Board therefore found your evidence insufficient to overcome this presumption. Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy or injustice warranting relief.

Regarding your request for remedial consideration, the Enlisted Promotions Manual requires that all Marines exercise due diligence in identifying errors, discrepancies, or an injustice in a timely manner and initiate appropriate action prior to the convening of the selection board, which considered, but did not select the Marine. The Board found no evidence of due diligence to correct your record prior to the convening of the FY 2021 promotion selection board. Based on the foregoing determinations, the Board concluded that your request does not warrant 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,

11/4/2023



Deputy Director

Signed by: 