



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. 8137-23
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.

A three-member panel of the Board, sitting in executive session, considered your applications on 31 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 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 your 25 January 2023 Administrative Remarks (page 11) counseling entry and associated rebuttal. The Board considered your statement that while at the Marine Corps Birthday Ball, there was an overly intoxicated sergeant (Sgt) and underage private first class (PFC) who were causing a scene, and when you and others tried to intervene, the Sgt became hostile and attacked you. You contend that your actions were deemed unbecoming of a staff non-commissioned officer (SNCO); however, all evidence from the Command Investigation (CI) and witness statements point to you as a victim of violence and simply defending yourself. You claim that you were the only individual who was issued any type of administrative punishment, no other parties involved, including the Sgt, who was identified as the aggressor, nor the underage PFC, received any type of adjudication. As evidence, you provided witness statements for consideration.

The Board noted the CI into circumstances surrounding allegations of a physical altercation involving [REDACTED] and another Marine of [REDACTED]. The Board also noted the investigating officer's finding that based on recordings of the altercation, it is visible that you took part in the fight and attempted to kick the Sgt as he was on the ground. The Board noted, too, that the IO recommended appropriate disciplinary action for the altercation. In addition, after a review of the CI and available evidence, the Commander, [REDACTED] concurred with the IO.

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 engaging in an altercation with other Marines, and for behavior that was unbecoming of a SNCO. The Board also noted that you acknowledged the entry and in your statement you indicated that you were deescalating the situation, seeking to prevent a possible sexual assault, and that both Marines made it home safely. 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 there is sufficient evidence to support the deficiencies noted in your counseling entry. The Board also determined that your CO relied upon the CI and acted within his 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 found your evidence insufficient to overcome this presumption. As a result, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the counseling entry 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.

Sincerely,

11/21/2023

[REDACTED]