

DEPARTMENT OF THE NAVY

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

> Docket No. 9917-23 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.

A three-member panel of the Board, sitting in executive session, considered your application on 16 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 application, 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) 6105 counseling entry, dated 21 April 2023, and your fitness report for the reporting period 1 April 2023 to 23 May 2023. The Board considered your contentions that you were wrongfully accused based on information that does not line up, contains erroneous information, and involves inconsistent statements. You assert you requested a court martial and they immediately gave you a 6105 counseling entry instead. You further assert you were accused, you were not at work on the days of the incidents and the Equal Opportunity representative who investigated the case reported found no evidence of wrongdoing. Further, the investigating officer had past issues with accountability of equipment. You believe the School of Infantry-East did not make timelines on reports and, by doing this, they put you in a delay status that made you ineligible for the fiscal year 2023 Staff Sergeant Selection Board.

The Board noted that pursuant to paragraph 6105 of the MARCORSEPMAN and the Marine Corps Individual Records Administration Manual, you were issued a page 11 counseling for failure to obey an order, cruelty, and maltreatment. The Board also noted that you acknowledged the entry and the entry was signed by your commanding officer (CO). The Board further noted that you submitted a statement regarding the page 11 entry and took that into consideration. Ultimately, the Board determined that the contested page 11 entry was written and issued according to regulations. 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 CO signed the entry, and he/she determined that your misconduct, which was corroborated by a command investigation, was a matter essential to record, as it was his/her right to do. Furthermore, 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. Thus, the Board determined insufficient evidence of error or injustice exists to warrant removal of the page 11 and associated rebuttal statement from your record.

Regarding your request for promotion to the rank of Staff Sergeant, the Board determined you provided insufficient evidence to prove that the action taken by your command was the reasoning for your ineligibility. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

With regards to the removal of your fitness report, the Board noted that pursuant to the Performance Evaluation System (PES) Manual, Marines must initially submit their request to the Manpower Management Division Records and Performance Branch (MMRP-30) and not directly to the Board for correction. The Board thus concluded that you did not exhaust all administrative remedies pursuant to PES Manual guidance, and directed that you submit your request to MMRP-30 for consideration.

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,