

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

> Docket No. 10579-23 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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 27 February 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 the 21 June 2018 Administrative Remarks (page 11) entry and rebuttal statement. The Board considered your contention that there is no clear evidence of a wrong, it was a judgment based on a stigma placed on the recruiting station you were part of, and based upon previous incidents that occurred. You also contend that the Investigating Officer (IO) did not request a legal sufficiency review from the Staff Judge Advocate office. You opined that if there was actual evidence of wrong doing a court martial would have been administered. However, punishment was a 6105 counseling entry with no article of the Uniform Code of Military Justice added. You claim that you did not receive an adverse fitness report, none of the incidents were noted in your fitness report, you successfully completed recruiting duty, and received a Navy and Marine Corps Commendation Medal. In addition, the counseling entry has put a hold on your career, and you have been passed over twice for promotion. You also claim that after speaking with the Marines in the investigation, some counseling entries were not added to their records.

The Board noted the Command Investigation (CI) into the facts and circumstance surrounding Recruiting Station (RS) command actions leading up to the submission of meritorious promotion nominees and the events following the discovery of erroneous physical fitness test (PFT) entries. The Board also noted the IO findings and that there was no evidence through personal systems or government information systems, to determine whether or not any of the Marines were conducting a PFT on 28 to 29 March 2018. The Board noted, too, that the Commanding Officer (CO) reviewed the investigation and enclosures in their entirely. Based upon that review, the CO determined that "[a]ppropriate administrative and disciplinary actions will be taken for the personnel involved with the erroneously reported PFT scores and the conduct of the PFT event(s) in question."

Pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a 6105 counseling entry you regarding the fore mentioned CI. The entry noted substantial evidence and contradictory information from statements by RS personnel as well as other available resources to call into question whether or not you conducted a PFT on or about 28 and 29 March 2018. The Board noted that you acknowledged the counseling entry and in your statement, you asserted that you were wrongfully accused and charged with not running a PFT without evidence. The Board determined that the counseling entry was written and issued in accordance with the MARCORSEPMAN. Specifically, the counseling entry provided written notification concerning your deficiencies, specific recommendations for corrective action, where to seek assistance, and 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 conduct was a matter essential to record, as it was his/her right to do.

Concerning your fitness report, successfully tour on recruiting duty, and personal award, the Board determined that the Marine Corps Performance Evaluation System Manual grants Reporting Seniors the discretionary authority to determine if an adverse fitness report is warranted. Accordingly, the lack of an adverse fitness report, completion of your tour as a recruiter and a personal award do not invalidate your counseling entry. Additionally, the Board found no evidence that the investigation lacked legal sufficiency and you provided none. Your CO acted within his/her discretionary authority and relied upon the available evidence that included the CI when determining that your counseling entry was warranted.

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. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action. 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.

Sincercity,
3/8/2024
Deputy Director
Signed by:

Sincerely