



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. 1538-24
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 application on 9 July 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 as well as the 21 April 2024 advisory opinion (AO) provided by the Marine Corps, Military Personnel Law Branch (JPL). The AO was provided to you on 23 April 2024, and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

The Board carefully considered your request to remove the 1 May 2023 Administrative Remarks (Page 11) 6105 counseling entries and associated rebuttals. You also request removal of all documents associated with your relief for cause and reinstatement of your selection to First Sergeant (1stSgt/E-8). The Board considered your contentions that the counseling entries are the result of undue command influence and a direct violation of Uniform Code of Military Justice (UCMJ) Article 37. Specifically, "No superior convening authority or officer may direct a subordinate convening authority or officer to make a particular disposition in a specific case or otherwise subordinate the dissection of such authority or such officer for that of the subordinate convening authority or officer." As evidence, you provided a letter from the Commanding Officer, Recruit Training Regiment (CO, RTR).

The Board noted that the Commanding General, Marine Corps Recruit Depot/Eastern Recruiting Region (CG, MCRD/ERR) concurred with the findings and recommendations of a command investigation that substantiated misconduct. The CG, MCRD/ERR directed the CO, RTR to formally counsel you. The CG also relieved you for cause and rescinded your promotion to 1stSgt.

The Board substantially concurred with AO and affirmed the previous Board's decision that your counseling entries were written and issued according to the Marine Corps Separation and Retirement Manual. The Board noted that the CO, RTR previously submitted correspondence advocating for the removal of your counseling entries; the Board however was not persuaded. Despite his disagreement with the CG's disposition of your case, the CG, MCRD/ERR had the authority to direct a subordinate officer to carry out administrative actions, and as a subordinate commissioned officer the CO, RTR was bound to follow a lawful order by a superior officer.

Concerning your contention the counseling entries are the result of undue command influence, the Board determined your contention lacks merit and reliance upon Article 37, UCMJ is misguided. The article actually states, no person subject to the UCMJ may "attempt to coerce or, by any unauthorized means, attempt to influence the action of a *court-martial* or any other military *tribunal* or any member thereof. . ." Article 37, UCMJ is applicable to courts-martial or military tribunals and does not extend to administrative actions, such as the issuance of a counseling entry. In your case, the CG, MCRD/ERR made a disposition decision based on a preponderance of evidence that included a command investigation. The Board also determined the CG's directive to a subordinate officer to take administrative action is not a violation of Article 37, UCMJ.

Concerning your relief for cause, the Board determined your relief for cause was valid and properly documented in your official military personnel file. As a drill instructor, the CG, MCRD/ERR was the final authority on your relief for cause. Moreover, the CG, MCRD/ERR's recommendation to revoke your promotion was valid and processed in accordance with the Marine Corps Enlisted Promotions Manual. 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.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

7/19/2024

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