



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

██████████
Docket No. 1727-24
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 11 June 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 applications, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies, as well as the 24 April 2024 Advisory Opinion (AO) provided by Headquarters, ██████████
██ Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

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 reinstate your rank to Gunnery Sergeant GySgt/E-7) with all back pay and allowances and to include constructive service credit for any period after discharge. The Board also considered your request to remove the Competency Review Board (CRB) from your Official Military Personnel File (OMPF). The Board considered the following contentions: there were significant defects with the CRB Board Report, no rehabilitative steps were taken despite clear requirements in the Marine Corps Order, the presumption of competency pursuant to the MCO P1400.32 (ENLPROMMAN) was not overcome, the CRB was used as a disciplinary tool, outstanding fitness reports were omitted

from evidence, and you did not have meaningful access to counsel. The Board also considered your claim that you were denied reenlistment with over 16 years of service.

The Board noted, on 19 June 2020, you were formally counseled for having an inappropriate relationship with a subordinate corporal. Then, at your next command, the Commanding Officer (CO) directed a command investigation (CI) into allegations that you sexually harassed two subordinate lance corporals. Based upon the findings of the CI, the CO issued you a formal counseling on 21 December 2022 for creating an uncomfortable working environment by singling out junior Marines and making unwelcome verbal comments of a sexual nature to them. Then, on 22 February 2023, you were notified that the CO intended to initiate a CRB. On 23 February 2023, the CRB determined by unanimous vote, the specifics for convening the competency review proceedings were supported by a preponderance of evidence to support a determination of professional incompetence. Further, the CRB recommended by unanimous vote that you be reduced as such without suspension. You subsequently were denied reenlistment and you were discharged on 10 January 2024.

The Board substantially concurred with the AO. In this regard, the AO notes that the CRB was not erroneous or unjust. First, the AO noted that you exercised your right to call witnesses at the CRB and that, pursuant to the ENLPROMMAN, the CRB report shall be kept in a summarized form. Next, you argue that your positive fitness reports were omitted from evidence; however, you provided insufficient evidence that you provided fitness reports and they were omitted as evidence by the CRB. Next, you argue that you had limited access to counsel; however, the Board noted that pursuant with the ENLPROMMAN, while you may consult with a civilian attorney, there is no right to representation by civilian counsel during these proceedings. The AO noted that you demonstrated poor judgement and lack of professionalism in grade as reflected in two formal counseling entries and that the CRB recommendation that you be reduced in grade is supported by the evidence. Finally, the AO noted that even without the reduction, your record contained negative information which would make the denial for reenlistment objectively reasonable. Thus, the Board concluded based on the totality of the evidence, that correcting your record to reinstate your rank to GySgt or removal of the CRB from your official record is not 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. Thus, the Board 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.

Sincerely,

6/28/2024

