



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. 1864-24
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 18 April 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 determined your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully considered your request to remove the “relief for cause source documentation” and the “revocation of rank source documentation” due to the lack of any misconduct documentation to warrant the relief for cause (RFC) and revocation of rank.

The Board, having reviewed all the facts of record pertaining to your allegations of error and injustice, found as follows:

Before applying to this Board, you exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.

On 20 July 2022, an Inspector General of the Marine Corps (IGMC) hotline complaint alleging an inappropriate relationship between yourself and a previous Marine Corps applicant was substantiated.

On 2 August 2022, your Commanding Officer (CO) notified you in writing that he was considering imposing nonjudicial punishment (NJP) due to violation of Article 92 (failure to obey order or regulation). Specifically, you were charged with violating DoDI 1304.33 dated 28 January 2015 by wrongfully engaging in inappropriate conversations via Instagram with a junior Marine in the training pipeline based on the IGMC investigation of 20 July 2022. After speaking with a lawyer, you refused NJP.

By memorandum of 15 August 2022, CO, Recruiting Station [REDACTED], recommended your RFC due to violation of MCO 5800.16 and DoDI 1304.33 and removal of the 8411 Military Occupational Specialty (MOS). The CO noted his belief that you were suitable for future special duty assignments and had potential for reenlistment and future service.

By his endorsement of 17 August 2022, CO, [REDACTED], forwarded the RFC request recommending approval. The CO noted you refused NJP and stated that “[d]espite [your] refusal, [your] substantiated misconduct is a far departure from the high standards requisite of Marine serving on recruiting duty.” Further, the CO stated your “disregard for orders and policies is indicative of an inability to remain in [your] current assignment.”

By memorandum of 24 August 2022, CO, [REDACTED] provided a second endorsement on a request for revocation of appointment to gunnery sergeant (GySgt) recommending revocation of your promotion.¹

By memorandum of 9 September 2022, Commanding General (CG), Marine Corps [REDACTED]² approved the request for RFC and voidance of your 8411 MOS. The CG further directed CO, [REDACTED], in accordance with paragraph 6105 of MCO 1900.16 CH 2, make a counseling entry in your service record book indicating you were relieved for cause due to misconduct. Additionally, the CG noted your reenlistment potential would be determined during fiscal year 2026 based on your competitiveness and eligibility for retention. However, based on the serious nature of the conduct that formed the basis for the RFC, CG, [REDACTED] did not concur with the CO’s statement you were suitable for future special duty assignment or future service.

On 23 September 2022, you were issued an Administrative Remarks (Page 11) entry³ counseling you after your RFC from recruiting duty due to misconduct. You availed yourself of the opportunity to submit a written rebuttal. In your rebuttal response, you

¹ This document, nor other documents specifically related to a request for revocation of rank, is not contained within your OMPF but was submitted for the Board’s consideration as part of your request for relief. Further, the copy you provide is unreadable.

² This document is not contained within your OMPF but was submitted for the Board’s consideration as part of your request for relief.

³ In your application package, you submitted a Page 11 counseling entry dated 31 August 2022 counseling you regarding your violation of Article 92 by failing to obey DoDI 1304.33 by sending inappropriate and unprofessional messages via Instagram to a Private First Class who was a student at [REDACTED]. In your submission, you highlighted the phrase “Furthermore you failed to accept responsibility for your actions by refusing NJP.” The Board noted this Page 11 counseling entry is not in your OMPF.

contend your refusal to accept NJP was “being used against [you].” Further, you contend the 23 September 2022 Page 11 entry is “retaliatory in nature because [you] exercised [your] right to refuse” NJP. In your statement, you implore that “all subsequent paperwork that has followed must be read in that context.” Additionally, you stated your belief that the adverse administrative action “[did] not comply with the IRAM or MARCORSEPMAN.” You conclude by requesting the Page 11 not be included in your official military personnel file (OMPF) because you “feel it is based on a personal attack of [your] rights under article 15 of the UCMJ.”

By memorandum of 31 October 2022, the Commandant of the Marine Corps (CMC) removed your name from the Fiscal Year 2022 GySgt Selection Board list in accordance with MCO P1400.32D w/CH2. In the revocation, the CMC noted “[y]our actions do not represent the values and professionalism expected of a staff sergeant of Marines.” Due to the Marine Corps’ loss of trust and confidence in your abilities to uphold the duties and responsibilities of the next higher rank, your selection to GySgt was revoked.

The Board carefully considered your contention that your OMPF lacks misconduct documentation to warrant the RFC or the revocation of rank. You further contend the documents were based off a misconduct documentation source that violated your Article 31(b) rights and was not a legal document.

The Board, noting you did not provide any documentation or evidence -- which had not previously been considered -- to support your contentions, presumed regularity in the CO’s decision to request your relief for cause, issue the 23 September 2022 Page 11 counseling, and the CMC’s decision to revoke your selection to GySgt. Further, the Board noted you have not denied the substantiated IGMC allegations but have focused on your belief that your RFC and the subsequent Page 11 entry were due to your refusal of NJP. Even after reviewing all your highlights in the supporting documentation you submitted, the Board determined there was insufficient evidence of an error or injustice in the actions taken in response to the substantiated IGMC hotline complaint regarding your inappropriate behavior as a recruiter. Based on the available evidence, the Board concluded there is insufficient evidence of an error or injustice warranting removal of the requested documents 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,

5/8/2024

