



**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. 2446-24  
Ref: Signature Date

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Dear Petitioner:

This letter is in reference to your application for correction of his naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found that the evidence submitted was 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 14 May 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 24 March 2024 Advisory Opinion (AO) provided by Headquarters U. S. Marine Corps, Manpower Management Performance Branch (MMPB-11). The AO was provided to you, and on 27 April 2024 you provided a response.

The Board carefully considered your request for reinstatement to the rank of sergeant (Sgt/E-5). The Board considered your contentions that your promotion was withheld after you were proven innocent for the accused misconduct as well as your claim that equal opportunity was not provided by the command. In response to the AO, you further assert that it is unjust, unfair, and improper to deny your promotion to Sgt when the sole reason was “legal action” which ended in a finding of “no basis” by an administrative separation (ADSEP) board. You further claim that the ADSEP board exonerated you of all wrongdoing and that you successfully convinced the members of the ADSEP board that you did not commit the misconduct alleged.

However, the Board substantially concurred with the AO provided by the Enlisted Promotion section, which noted that you were placed in a not recommended for promotion status to the rank of sergeant from 31 July 2022 until 30 January 2024. Further, pursuant to the ENLPROMMAN, the AO notes the Commandant of the Marine Corps has delegated the authority to promote enlisted Marines to the grades of private first class through Sgt to the unit Commanders.

Moreover, a Marine will not be promoted if, in the opinion of the commander, the Marine is not capable of performing satisfactorily in the higher grade, even though all other requirements have been met. Finally, the Board also noted pursuant to para 1204 of the ENLPROMMAN, a Marine is not eligible for promotion consideration and may not be promoted while in a promotion restriction status. In your case, the Board determined you provided insufficient evidence that the alleged misconduct did not occur and noted that you were in a promotion restriction status from September 2021 until you were medically discharged on 29 February 2024. Accordingly, the Board determined your commanding officer had sufficient evidence and acted within his discretionary authority when he determined that you should not be promoted to sergeant in accordance with all relevant policies.

In regards to your contention that an ADSEP Board exonerated you of all wrongdoing and that you successfully convinced the members of the ADSEP Board that you did not commit the misconduct alleged, the Board noted that an ADSEP board functions as an administrative rather than a judicial body, the purpose of which is the administrative elimination of unsuitable, unfit, or unqualified Marines, and not the judicial process, the purpose of which is to establish the guilt or innocence of a member accused of a crime and to administer punishment when appropriate.

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. Hence, 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.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon the submission of new matters, which will require that you 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,

5/28/2024

