



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. 3866-24
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 23 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 applications, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies.

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 remove your 6 April 2023 Administrative Remarks (Page 11) counseling entry. The Board considered your contention that an investigation came back unsubstantiated but you were then charged for an unrelated offense.

The Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a 6105 entry counseling you violating Article 92, Failure to Obey an Order or Regulation of the Uniform Code of Military Justice (UCMJ). The Board noted you signed the counseling entry and although you were afforded the opportunity to provide a statement, but you did not. The Board determined the contested counseling entry was written and issued according to the MARCORSEPMAN. Specifically, the counseling entry provided written notification concerning your deficiencies, specific recommendations for corrective action, where to seek assistance; the consequences for failure to take corrective action, and it afforded you the opportunity to submit a rebuttal. Moreover, your

CO signed the counseling entry, and he/she determined that your substandard performance/misconduct was a matter essential to record, as it was his/her right to do.

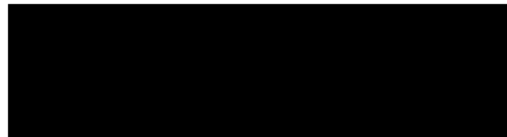
Regarding your contention that you were wrongfully counseled for misconduct that was not the subject of the original investigation, the Board determined your contentions are without merit. The Board noted a formal investigation is not required for the issuance of a counseling entry should the CO determine sufficient evidence exists to support the basis for a counseling entry. Additionally, the Board considered that you acknowledged the gravity of your conduct and that it was a mistake in your fitness report ending 1 August 2023. 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 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.

The Board did not consider your request to remove your fitness report for the reporting period 4 March 2023 to 1 August 2023 because you must first exhaust your administrative remedies. The Performance Evaluation Review Board (PERB) is the initial action agency for fitness report appeals; therefore, you must submit your request to the PERB according to the Marine Corps Performance Evaluation System Manual.

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, _____

5/17/2024

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Executive Director

Signed by: _____