



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

██████████  
Docket No. 4027-24  
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 carefully considered your request to remove your 1 August 2022 Administrative Remarks (Page 11) counseling entry and associated rebuttal statement. The Board considered your contention the counseling entry was erroneous and inaccurate for multiple reasons. First, you assert the counseling stemmed from an investigation that found no probable cause for sexual assault and no evidence of an inappropriate relationship between you and a junior female Marine. The Board considered your claim that you were the junior Marine's supervisor and communicated with her on a daily basis for work related topics. Next, you claim that had your chain of command looked at your subpoenaed phone records, they would have seen consistent communication by telephone with numerous other Marines throughout the same period. Finally, you also claim that you attempted to work with the junior female Marine because she was a troubled single mother who needed consistent micro-management. Further, once she was back on track, she became angry establishing a clear motive to fabricate the allegations, which is why you never received any punishment other than the counseling. Finally, the Board also considered your request for promotion to Master Sergeant (MSgt/E-8) for October 2022 and your claims that the negative and false allegations have made it so you could not be promoted.

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 for failure to maintain appropriate standards of conduct expected from a Staff Non-commissioned Officer (SNCO). Further, the counseling entry states that, based upon the findings of a Naval Criminal Investigative Service (NCIS) Investigation and the totality of the circumstances, you violated Article 1165, U.S. Navy Regulations 1990 (Fraternization) by wrongfully having an unduly familiar relationship with one of your junior female enlisted Marines. The Board noted you signed the counseling entry and you were afforded the opportunity to provide a statement, which could be found in your official record. 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.

In regards to your contentions that probable cause was not established, biometrics were not collected during NCIS Investigation, and there was no evidence to indicate an inappropriate relationship between you and a junior female Marine, the Board determined, other than your personal statement, you provided insufficient evidence to support this claim. Moreover, the Board noted, although the NCIS investigation found no probable cause for the allegations of sexual assault, the counseling entry was issued for failure to maintain appropriate standards of conduct expected from a SNCO and for violating Article 1165, U.S. Navy Regulations 1990 for fraternization; which the CO determined was substantiated during the investigation. Finally, regarding your claim that you never received any punishment other than the counseling, the Board noted adverse or punitive actions are not required for the issuance of a counseling entry should the CO determine that a counseling entry is warranted.

Regarding your claim the counseling entry contributed to your non-selection to MSgt, the Board determined your contentions are without merit. In this regard, the Board noted, pursuant to the Marine Corps Enlisted Promotion Manual, it is the selection board's responsibility to recommend to the Commandant of the Marine Corps those Marines "best and fully qualified" for promotion to the next higher grade. Furthermore, the Board determined that whether or not the contested counseling entry or fitness reports for the reporting period hindered your selection to MSgt is conjecture the Board cannot validate.

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 reports for the reporting periods 11 August 2021 to 18 January 2022 and 19 January 2022 to 30 April 2022 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

