



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

██████████
Docket No. 4341-24
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 7 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 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 11 October 2023 Administrative Remarks 6105 (page 11) counseling entry. The Board also considered your request to have your selection to Master Sergeant (MSgt) be reinstated. The Board considered your contention that you were the subject of an administrative separation (ADSEP) board and exonerated of all wrongdoings. You further contend after the ADSEP Board, an additional charge was added and you were issued a counseling entry for the same offense. Finally, the Board considered your contention that your promotion to MSgt was revoked due to the counseling entry. The Board did not consider your request to remove your adverse fitness report for the reporting period. The Board noted the fitness report for the period ending on 31 May 2023 was not adverse; furthermore, the Board noted that 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.

The Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), on 11 October 2023, you were issued a 6105 entry for violation of Article 92, Failure to Obey a Lawful General Order. The Board noted that you signed the

counseling entry and, in your rebuttal statement, you assert that you had not been convicted of any offense and you claim that the allegations against you were absolutely false. The Board determined that 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. Further, your commanding officer (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. The Board thus determined the CO relied upon sufficient evidence and acted within his/her discretionary authority when deciding that your counseling entry was warranted.

In regards to your contention that the Administrative Separation Board (ADSEP) determined that the preponderance of evidence did not prove any of the acts or omission alleged in the notification and recommended you for retention, the Board determined that the ADSEP board functions as an administrative rather than a judicial body whose sole purpose is the administrative elimination of unsuitable, unfit, or unqualified Marine from continued service. The Board also considered your contention that an additional charge was added to the ADSEP Board and you were issued a counseling entry for the same offense. Thus, the Board determined that the ADSEP board's findings do not invalidate the counseling entry and you provided insufficient evidence for the Board to conclude the acts did not occur.

Concerning your request to have your selection to MSgt reinstated, the Board noted pursuant to MCO P1400.32D, when the commander determines a Marine who has been selected for promotion is unqualified for promotion, he must immediately notify the Commandant of the Marine Corps (CMC) prior to the effective date of promotion. Upon receipt of the detailed report, the CMC will make a final determination and may act to deliver, delay, or revoke the Marine's name from the appropriate selection list. In your case, although the CO favorably recommended that you be promoted to MSgt, on 7 March 2024, the Deputy Commandant, Manpower and Reserve Affairs (DC, M&RA), on behalf of the CMC, revoked your promotion to MSgt based upon your violation of Article 92 of the UCMJ. Thus, the Board determined the DC, M&RA acted within his discretionary authority when determining your promotion would be revoked.

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,

5/21/2024

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Executive Director

Signed by: 