



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

█  
Docket No. 4737-24  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 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 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 application, 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 1 July 2022 Unit Punishment Book (UPB) which documents your Non-judicial Punishment (NJP) and all associated documents, to include the 1 July 2022 Administrative Remarks (Page 11) 6105 and Promotion Restriction counseling entries, as well as your revocation of selection to Gunnery Sergeant (GySgt). The Board considered your contention that you were subject to unjust and unfair legal proceedings that resulted in NJP and subsequently led to revocation of your selection to GySgt by the Fiscal Year (FY) 2022 Promotion Selection Board. You allege that the investigation was conducted without any evidence or witness statements in your defense and that you were notified and processed with a 48-hour period for time of notification of NJP to the proceedings. You also claim that you were not able to view any of the evidence against you until after the NJP and, upon review, you noticed irregularities with the evidence and later requested to appeal the process but that it was denied by your command. The Board did not consider your request to

remove your adverse fitness report for the reporting period 8 January 2022 to 1 July 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.

In regard to your claims that you were subject to unjust and unfair legal proceedings that resulted in NJP and your subsequent revocation of selection to GySgt, the Board noted, on 28 June 2022, a Preliminary Inquiry (PI) was conducted concerning possible fraudulent entries of training events. The PI documented that you coordinated with the Command Physical Training Representative (CPTR) the execution of a partial physical fitness test (PPFT). The PI also determined that you attempted to fraudulently submit training events that you did not complete. In this regard, the Board noted, on 23 May 2022, you ran a PPFT. However, in the summary of interview dated 9 June 2022, it states you only completed the crunch portion of the PFT. Pursuant to MCO 6100.13A, in order to meet the PPFT requirements, you are required to complete two of three PFT events.

As a result, on 1 July 2022, you were the subject of NJP for Violation of Article 107, False Official Statement and Article 134, Prejudice to Good Order and Discipline of the Uniform Code of Military Justice (UCMJ). You were advised of your rights under Article 31 and acknowledged your right to demand trial by court martial in lieu of NJP. As punishment, you received forfeiture of \$1028 for two months and placed on restriction and extra punitive duties for 45 days, with the punishments suspended for six months. Next, the CO issued you a counseling entry for your NJP and your promotion to GySgt was revoked by the Deputy Commandant, Manpower and Reserve Affairs (M&RA) on behalf of the Commandant of the Marine Corps (CMC). The Board determined other than your personal statement and your claims, you provided insufficient evidence that the PI or the NJP was improperly executed. In this regard, the Board noted the Marine Corps followed all of its procedures for awarding an NJP. You were advised of your right to refuse NJP and demand trial by court-martial in lieu of NJP, but you chose not to. You were also given an opportunity to consult counsel prior to accepting NJP, which you did. You agreed to accept NJP subject to your right of appeal, but you did not appeal. The Board thus determined that your CO was well within his discretionary authority to impose NJP. Thus, the Board determined that you provided insufficient evidence in support of this claim.

Finally, in regards to your to have your selection to GySgt 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, the Commandant of the Marine Corps (DC, M&RA) will make a final determination and may act to deliver, delay, or revoke the Marine's name from the appropriate selection list. Thus, the Board determined the DC, M&RA acted within his discretionary authority when revoking your selection to GySgt based upon your violation of Articles 107 and 134 of the UCMJ. Thus, The Board thus 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.

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 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

