



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

██████████
Docket No. 5006-24
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 14 March 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 10 January 2023 Administrative Remarks 6105 (page 11) counseling entry. You also request to remove your fitness report for the reporting period 5 January 2023 to 11 January 2023. The Board considered your contention that it is conflicting in nature, the counseling entry was not administered correctly and does not accurately capture your circumstances. You claim that while at ██████████ - ██████ (██████████) you were under the impression that you were attending the primary military occupational school for 0331 and that when you were placed into the 0311 Basic Infantry Officer course, you requested to be dropped. You further contend that the first sergeant told you if you tried to submit a rebuttal it would prolong you staying at the school. Finally, you claim that you requested to be moved to a later date due to family matters you needed to be present for. The Board did not consider your request to remove your adverse fitness report for the reporting period 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.

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 violation of Article 91, Insubordinate conduct toward a warrant officer, non-commissioned officer, or petty officer, of the Uniform Code of Military Justice (UCMJ) for willfully disobeying a lawful order of a Staff Sergeant

to participate in range [REDACTED], long bay/short bay training and by stating that you “refused to train.” The Board also noted that you signed the counseling entry, and you were afforded the opportunity to provide a rebuttal and chose not to. 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. Moreover, 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 that the CO relied upon sufficient evidence and acted within his/her discretionary authority when deciding that your counseling entry was warranted.

Concerning your contention that you requested to be dropped from the course due to being unaware that you were required to attend 0311 Basic Infantry Marine Course in addition to the 0331 Machine Gunner course, however other than your personal statement, you the Board noted you provided insufficient evidence as to how this would invalidate the counseling entry.

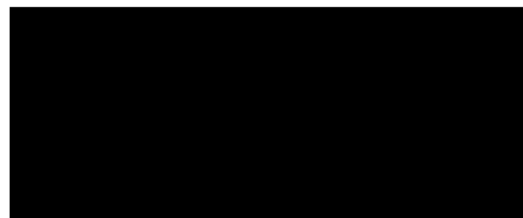
In regards to your contention that the fitness report references Article 92, failure to obey an order or regulation, and your assertion that this is conflicting information between the counseling entry and fitness report, the Board noted the fitness report indicates that you received the counseling entry for refusing to obey a lawful order to continue training and for failing an entry level MOS school. Furthermore, the Board noted there is no requirement for the counseling entry and the fitness report to contain the same information verbatim and determined there was no error or injustice with the CO’s decision to issue the counseling entry.

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.

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,

5/28/2024

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