



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. 5384-24
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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 21 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 Administrative Remarks 6105 (page 11) counseling entry.¹ You claim that the commanding officer (CO) failed to submit your rebuttal to your official record and in doing so it could lead to the acceptance of allegations without challenge. You further assert that during the counseling session, you were instructed to draft a rebuttal and that you emailed the rebuttal to the company gunnery sergeant and left a hard copy on your CO's desk but that you were unable to confirm proper custody chain due to COVID-19 restrictions as well as preparing to execute permanent change of station the same month. Finally, you also contend that the associated fitness report was graded severely without proper documentation.

¹ The 6105 counseling entry is undated, however was based the following deficiencies: conducting yourself in a manner not appropriate for a staff noncommissioned officer and misuse of your Government Travel Charge Card. Specifically, on 14 March 2021 you engaged in fraternization..... While at the club, you used your Government Travel Charge Card twice....

The Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a 6105 entry counseling for conducting yourself in a manner not appropriate for a staff noncommissioned officer and your misuse of your Government Travel Charge Card. You signed the counseling entry, and the Board also noted you did not make any election regarding the submission of a rebuttal statement. The Board determined that the contested counseling entry was written in accordance with 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. 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 the fitness report ending on 25 July 2021 was graded severely without proper documentation, the Board noted that pursuant to MCO 1610.7A, noted the fitness report was not adverse and you provided insufficient evidence that the performance traits were graded improperly. Furthermore, the Board noted that receipt of a 6105 counseling entry does not automatically constitute derogatory material on the next fitness report.

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.

Lastly, even though the Board denied your request to remove your counseling entry, they noted that you may complete and submit a new DD Form 149 requesting that your rebuttal statement be added to your official record. You are also entitled to have the Board reconsider its decision upon submission of new matters, which will also 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,

5/29/2024

