



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. 5899-24
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 8 October 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 as well as the advisory opinion (AO) furnished by the Licensed Clinical Psychologist dated 24 September 2024 and your response to the AO.¹

The Board carefully considered your request to correct your Master Brief Sheet (MBS) to reflect "NMED vice FAIL/RNT." You also request remedial consideration for promotion to Gunnery Sergeant (GySgt/E-7). The Board considered your contention that you were not required to take a combat fitness test (CFT) during the 2017 semi-annual period. You also content that the Fiscal Year (FY) 2018 GySgt promotion selection board (PSB) did not select you because the MBS indicated that you failed the CFT. You claim there has been no adversity in your record since 2015 and you recovered from that adversity. You also claim that you were diagnosed with Post Traumatic Stress Disorder (PTSD) and Major Depressive Disorder (MDD) from your time in the Marine Corps.

The Board noted that you were eligible and properly considered in zone during the FY 2016 GySgt promotion selection board (PSB), and you were not selected. During the FY 2017 GySgt

¹ After receipt of your statement and additional medical documentation, the AO was revised to conclude that there is some evidence that mental health concerns may have contributed to your performance dated 26 September 2024.

PSB, you were eligible and properly considered above zone, and you were not selected. Prior to the convening of the FY 2018 GySgt PSB, you were issued a fitness report for the reporting period 23 February 2017 to 31 December 2017. Section I of your fitness report states, "MRO is unable to take CFT due to medical issues." Section I also states, "MRO is outside of height and weight standards." The Board also noted that the FY 2018 GySgt PSB convened on 8 April 2018, you were eligible and properly considered above zone, and not selected. The Board noted, too, that a Physical Evaluation Board (PEB) found you unfit and began the process to place you on the temporary disability retired list (TDRL). Instead of accepting the PEB findings, you waived those findings, and voluntarily requested to participate in the FY 2018 Marine Corps Temporary Early Retirement Authority (TERA) Program. On 31 July 2018, you were transferred to the Fleet Marine Corps Reserve (FMCR).

The Board determined your contention that the error on your MBS caused you to fail selection lacks merit. In this regard, the Board noted that you received an adverse fitness report, in grade, ending 4 September 2015 while assigned as a student at the Marine Corps Combat Instructor School. Section I, indicates that you failed to meet the required minimum standard of performance and exhibited a lack of reasonable effort based on your failure to complete the "most rudimentary tasks associated with the Program of Instruction." The Board also noted that you failed selection for promotion during two previous PSB with no evidence of any purported errors in your record. The Board noted, too, that your in grade and cumulative evaluation values, were in the middle or lower third of your Reporting Seniors profiles. Based on the fore going, the Board opined that the FY 2018 GySgt selection board determined that you were not amongst the best qualified for promotion to GySgt. Moreover, the precept convening the FY 2018 GySgt selection board provides that, "[t]he function of the selection board is to recommend eligible staff sergeants for promotion to the next higher grade. The Marines selected will be those whom a majority of the members of the board consider best qualified for promotion to meet the needs of the Marine Corps." The precept also charges board members to brief all adverse material and acknowledges that a judgment of the whole person and the *whole record* is required to determine whose future potential will best serve the Marine Corps

The Board determined that it is highly unlikely that an error on your MBS resulted in your failure to be selected amongst the best qualified for promotion. Your fitness report indicating that you were not required to take the CFT due to medical reasons was available for the PSB's consideration. The Board opined that even if the PSB members ignored your fitness report comments regarding the CFT, your record contained adverse material, and relative values indicative of average to below average performance. The Board also determined that the FY 2018 GySgt PSB's finding that you were not amongst the best qualified for promotion is not an error or injustice.

Concerning your request for remedial promotion consideration, the Board determined that you do not meet the criteria for remedial consideration as provided in the Marine Corps Promotion Manual, Enlisted Promotions (MARCORPROMAN, ENLPROM). Applications for enlisted remedial selection boards (ERSBs) must be received no later than three years after the date the contested board results were made public. Applications made more than three years after the date board results were made public will be treated as untimely and will be denied. The Board also determined that your request is untimely, the results of the FY 2018 GySgt PSB were made

public more than six years ago. Additionally, according to the MARCORPROMAN, ENLPROM dissatisfaction with the results of the selection board, errors on the MBS or incorrect CFT information are amongst examples that will *not* normally constitute a basis for granting remedial consideration for promotion. Lastly, because you have been transferred to the FMCR, you are not eligible for remedial consideration.

Concerning your PTSD and MDD diagnosis, the Board carefully considered your statement regarding the impact of your mental health conditions. The Board noted that the AO initially concluded that there is insufficient evidence to attribute your failure to select to PTSD or another mental health concerns. After receipt of your statement and additional medical documentation, the AO was revised to conclude that there is some evidence that mental health concerns may have contributed to your performance. The Board acknowledged that your mental health might have contributed to your performance, however, the Board found no nexus between your mental health diagnosis, the error on your MBS, and FY 2018 GySgt selection board process. 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.

Concerning the error on your MBS, the Board determined you have not exhausted your administrative remedies with the Marine Corps. Requests for corrections to the MBS are administrative in nature and must be sent to Headquarters Marine Corps (MMRP) or to the MMRP organizational mailbox: smb.manpower.MMRP@usmc.mil.

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,

10/15/2024

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Deputy Director

Signed by: █