



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. 5984-24
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 15 August 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.

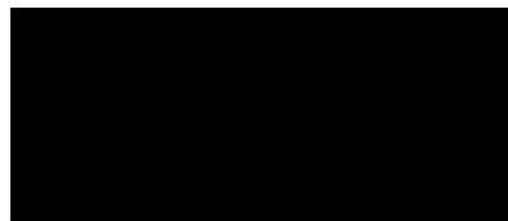
The Board carefully considered your request to remove the Administrative Remarks (Page 11) counseling entry dated 12 February 2024 because the issuance of the Page 11 “was an excessive use of force” that “unjustly persecuted” you. You contend you were forced to close the business and still received the 6105 counseling, even though divesting your holding in the company was supposed to be a sufficient resolution to the potential conflict of interest. You further contend you were accused of violating DoD 5500.07 although you were never afforded the rights outlined in the same regulation, to include “the right to formally recuse yourself to your Commanding Officer (CO) to mitigate any potential conflict [of] interest.” You also contend you were never formally trained on the policies. Further, you contend your unit did not – and still does not – have a formal policy that prohibits or mentions any type of businesses that Marines in the command can/cannot own, operate, or invest in. Additionally, you contend the business, in which you were a partial owner, operated in accordance with state law and was a legally operating school according to the █ Department of Education. You further contend you took appropriate action by filing an affidavit with the state of █ giving 25% of your company to a manager who ran the business so you would not be involved with any operations. Despite asking for the request in writing, you contend you never received a “direct order” to terminate the business.

The Board, however, determined the counseling entry creates a permanent record of matters your CO deemed significant enough to document. The Board noted the entry provided written notification concerning your deficiencies, specific recommendations for corrective action, and an explanation of the consequences of failure to successfully take the recommended corrective action. The Board also noted you availed yourself of the opportunity to provide a rebuttal statement and that statement is properly included with the counseling entry in your official military personnel file. Further, the Board noted the entry was appropriately issued by a CO as evidenced by his signature on the entry. The Board carefully considered your contentions but determined the CO has wide discretion regarding the subject matter of a counseling entry, and it is within his discretionary authority to determine if/when a counseling entry is warranted. The Board considered your contentions but, noting your own discussion of the steps the state of [REDACTED] required of you, found it difficult to believe that you, a Gunnery Sergeant and recruiter, would not discuss the venture with your chain of command prior to starting a "virtual school which accepted enrollment for applicants seeking enlistment in the Marine Corps." The Board concluded the defense of "the command did not formally train me" did not render the counseling entry inappropriate or outside the CO's discretion. As a result, the Board concluded there is insufficient evidence of material error or injustice warranting the removal of the contested Page 11 entry. 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,

9/9/2024

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