



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. 6373-24
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 10 September 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.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will 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 for reinstatement in the Marine Corps as an officer in the grade of Major (Maj/O-4) with back pay, allowances, and constructive service credit. You also request consideration for promotion to lieutenant colonel (LtCol/O-5) for Fiscal Years (FY) 2020 to 2023. The Board considered your contention that the 88th Readiness Division Retirement Services Office provided erroneous and misleading advice. Specifically, if you resigned your commission, upon retirement from active duty as an enlisted member, you would retire with your former rank and receive retirement pay as an Army Maj. But for the erroneous advice, you assert that you would have been competitive for promotion to LtCol.

The Board noted that you were released from active duty on 31 August 2023 due to an intradepartmental transfer. The Board also noted that you were accepted into the Selected

Marine Corps Reserve (SMCR). The Board, however, is unable to address your contentions regarding advice you received from the 88th Readiness Division Retirement Services Office. The Board also determined that no further action can be taken on your request for reinstatement to active duty until you first exhaust your administrative remedies with the Marines Corps. Specifically, you have not yet exhausted your administrative remedies by submitting an application to return to active duty pursuant to MARADMIN 396/23, which announced the Return to Active Duty Program for Marine Corps Officers.

Concerning your request for promotion to Maj and subsequent consideration for promotion to LtCol, the Board cannot take any action on your request for promotion. Pursuant to the 10 February 2015 Under Secretary of Defense Memo, Military Department correction boards do not have the authority to remedy perceived errors or injustices by correcting records to show that an officer has been appointed to a certain grade when the officer has not been appointed to that grade by the President or Secretary of Defense. 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.

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,

9/26/2024

