



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. 6538-24
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 applications, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies, , as well as the 29 July 2024 Advisory Opinion (AO) provided by Headquarters, Marine Corps, Military Personnel Law Branch (JPL). Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

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 to remove from your Official Military Personnel File (OMPF) the Unit Punishment Book (UPB) entry, the associated Administrative Remarks (Page 11) 6105 counseling entry dated 1 January 2023, and the 1 January 2023 and 22 June 2023 Promotion Restriction counseling entries. In addition, the Board considered your request to restore your promotion to sergeant and all backpay. If the Board granted the above mentioned relief, you further requested the Board determine if you would have been eligible for promotion consideration to staff sergeant.

The Board did not consider your request to remove your fitness report for the reporting period 1 April 2022 to 1 January 2023 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 considered your contentions that the administrative separation board (ASB) found your punishment to be without merit, leading to a no-basis finding and exoneration by the ASB. You also claim the ASB unanimously agreed your actions did not amount to an offense chargeable under the Uniform Code of Military Justice (UCMJ) and that relief should be granted given due to multiple instances of procedural errors, unfair treatment, and disproportionate disciplinary action. Next, the Board considered your claims that your rights were violated under the UCMJ, inconsistencies in the application of Marine Corps regulations, and your claims that there is evidence of discrimination and undue harshness in the disciplinary measures imposed upon you. Finally, the Board considered your assertion that given your distinguished service and commitment to the Marine Corps, correction of your OMPF will reflect the true nature of your conduct and achievements.

However, the Board substantially concurred with the AO, which recommended that your requested relief be denied. In this regard, the Board noted neither the ASB document you provided nor your explanation serve as evidence that the NJP¹ are erroneous. Further, the Board noted even if the ASB did not find a basis for separation after considering the disciplinary history as detailed in your petition, such a finding does not nullify the CO's previous administrative actions. Furthermore, the Board determined the ASB conclusion does not invalidate the CO's NJP or counseling determinations, just as the CO's actions were not binding on the ASB.

In regard to your contention that your Article 31(b) rights were violated, the Board noted an NJP proceeding is not a criminal trial. Rather, it is a disciplinary proceeding designed to address minor misconduct in a non-judicial forum, without a record of a federal conviction, and provide punishment, if appropriate. Next, the Board noted the undated and unsigned letter from the investigation in relation to the use of unwarned statements and determined this does not represent an error, and noted the rule merely limits the introduction of improperly warned statements into evidence at court-martial. Thus, the Board further noted they have limited applicability to administrative actions and do not prevent the command from using statements not in compliance with 31(b) to make administrative determinations.

The Board noted the Marine Corps followed all of its procedures for awarding NJP in determining the NJP should remain in your record. In this regard, the Board noted you received NJP on 1 January 2023 for violating Article 92, of the Uniform Code of Military Justice (UCMJ). Moreover, the commanding officer (CO) found you guilty at NJP and you were awarded reduction in grade to E-4, 30 days restriction and extra punitive duties to run concurrently, Forfeiture of \$1457.00 pay per month for 2 months (Total Forfeiture \$2914.00), which was suspended for six months unless sooner vacated. The Board noted you acknowledged your Article 31, UCMJ Rights, and you accepted NJP, subject to your right to appeal. The Board determined that your NJP was conducted according to the Manual for Courts-Martial (2019 ed.) and your CO acted within his discretionary authority to impose NJP. The Board also determined

¹ The Board found no evidence of a second NJP from 22 June 2023 in your record.

that when making the decision to impose NJP, the CO relied on a preponderance of evidence that substantiated the allegations of misconduct.

Next, the Board noted that, pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), on 1 January 2023, you were issued a 6105 entry counseling you for Battalion NJP for violation of Article 92, of the UCMJ. The Board also noted that you signed the counseling entry and although you were afforded the opportunity to submit a statement, you did not. 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 afforded you the opportunity to submit a rebuttal. Next, the Board noted pursuant to the Marine Corps Individual Records Administration Manual (IRAM), you were notified that you were eligible but not recommended for promotion to sergeant due to NJP for a period of six months. The Board concluded you were properly counseled and determined that the contested entry was written and issued in accordance with the IRAM.

Then, on 27 June 2023, the Board noted that pursuant with paragraph 6105 of the MARCORSEPMAN, you received a counseling for violation of Article 91, of the UCMJ. Specifically, insubordinate conduct toward a warrant officer, noncommissioned officer, or petty officer, while embarked on the [REDACTED] by willfully disrespecting a sergeant by utilizing profanity after receiving a lawful order. 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 afforded you the opportunity to submit a rebuttal.

The Board noted that your commanding officer (CO) signed the counseling entries, and determined that your substandard performance and misconduct was a matter essential to record, as it was his or 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 entries were warranted.

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,

9/30/2024



Executive Director

Signed by: [Redacted]