



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

██████████
Docket No. 7056-24
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 16 July 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 determined that your personal appearance, with or without counsel, would 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 your 8 February 2019 Administrative Remarks (page 11) 6105 counseling entry. The Board considered your contention that, after your attempt to request a copy of the investigation via appropriate channels, you found no record of an investigation pertaining to the counseling entry.

The Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued the counseling for violation of Article 134, Uniform Code of Military Conduct (UCMJ). Specifically, the entry indicates that while you were on recruiting duty, you abused your authority as a staff non-commissioned officer. The Board also noted that you acknowledged the entry and, in your statement, you assert that the entry was received for actions you did not commit, the charges were dismissed and withdrawn, and there is no evidence that you committed any such actions.

However, the Board determined that the contested entry was written and issued according to the MARCORSEPMAN. Specifically, the 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. Further, your commanding officer (CO) signed the entry, and determined that your violation of the UCMJ was a matter essential to record, as it was his right to do.

In regards to your contention that there is no evidence of an investigation, the Board noted a formal investigation is not required for the issuance of a counseling entry if the CO determines sufficient evidence exists to support the basis for a counseling entry. 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. Thus, the Board determined that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the counseling entry. Accordingly, given the totality of the circumstances, the Board concluded 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,

8/7/2024

