



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

█  
Docket No. 7480-24  
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 13 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 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 modify your effective (EFF) date of rank (DOR) for Chief Warrant Officer 2 (CWO2) to 1 August 2022 with backpay and allowances. The Board also considered your request to remove the Administrative Remarks (page 11) counseling entry dated 31 January 2022 and associated rebuttal. The Board considered your claim that additional evidence you provided for the Board's consideration, which was not included in the command investigation (CI), may have resulted in a Non-Punitive Letter of Caution (NPLOC) instead of formal counseling and promotion withhold. The Board also considered your claim that the counseling entry incorrectly states that you behaved in equal fashion as the █ however, you further assert that you received harassing phone calls through a blocked number for months before responding in the manner in which you did. Next, you assert that you took ownership of your actions and never engaged with the individual again. Finally, you claim

that you were over punished, given the circumstances, and the fact that you have served for 18 years with no [other] incidents on your record shows your character.

The Board noted on or around July 2021, your command received notification of allegations of adultery and inappropriate harassing/electronic communication by a TSgt. As a result, the commanding officer (CO) directed a CI into the aforementioned allegations. Based upon the findings of the CI, on 27 January 2022, the CO recommended the inclusion of adverse material in your official military personnel file; specifically, the 21 January 2022 Report of Misconduct (ROM). The CO determined your communication with the [REDACTED] displayed a lack of maturity, bearing, professionalism, and judgment, and were not in keeping with the high standards expected of Marine Corps officers. While the [REDACTED] behaved in equal fashion, he indicated that you should have disengaged from the emotionally charged situation. On 31 January 2022, the Commander issued you a counseling entry concerning the above-mentioned misconduct. On 14 April 2022, the Commandant of the Marine Corps (CMC) ordered the inclusion of adverse material in your record but determined that the information provided, while adverse, did not warrant processing for administrative separation and directed the Administrative Proceedings be closed. On 25 October 2022, the CMC determined you were not qualified for promotion to CWO2 with your peers but that you could submit a request for reconsideration one year from the date of notification. On 24 June 2024, Secretary of Defense (SECDEF) authorized your appointment to CWO2 and, on 9 July 2024, CMC (DC, M&RA) authorized your promotion to CWO2 with an adjusted DOR of 1 May 2023.

The Board considered your contentions regarding the removal of the counseling entry. However, the Board determined the contested entry was written and issued in accordance with Marine Corps Individual Records Administration Manual (IRAM). You signed the counseling entry, and you were afforded the opportunity to submit a rebuttal but chose not to do so. The Board noted your CO indicated that he believed the counseling entry to be appropriate based on the findings of the investigation, using a preponderance of the evidence standard. Thus, the Board determined you provided insufficient evidence warranting removal of the counseling entry.

Next, the Board considered your claim that you were over punished and you have served for 18 years with no [other] incidents on your record which shows your character; however, the Board determined there was sufficient evidence to prove that you acted inappropriately towards an enlisted member of the USAF based on the CI and Investigating Officer's (IO's) findings. Further, the Board found no evidence that the investigation was in error and you provided none.

In regards to your claim the additional evidence you have provided for the Board's consideration, which was not included in the CI and may have resulted in a NPLOC instead of formal counseling and promotion withhold, the Board is not an investigative agency and relies on a presumption of regularity to support the official actions of public officers. In the absence of substantial evidence to the contrary, the Board will presume that they have properly discharged their official duties. The Board found your evidence insufficient to overcome this presumption. In making this finding, the Board also considered that the CMC and SECNAV would have reviewed and considered your statements, record of performance, all endorsements, and any matters when making their decision regarding your promotion.

Finally, the Board noted pursuant with MCO 1400.31D, Volume 1, Officer Promotions, warrant officers promoted to CWO2, DOR adjustment authority rests with the CMC. The Board found no errors or injustice in the processing of your promotion withhold or the CMC decision to deliver your promotion with an adjusted DOR. Thus, the Board determined the CMC acted within his discretionary authority and relied upon sufficient evidence when determining that your withholding of promotion and counseling entry and associated ROM were warranted. Thus, the Board determined you failed to provide substantial evidence that the CMC's decision was unjust or materially in error. Therefore, the Board concluded that a backdated promotion to CWO2 is not warranted.

Therefore, 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,

9/8/2024

