



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. 8238-24
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 5 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.

The Board carefully considered your request to remove the Administrative Remarks (Page 11) 6105 counseling entries received on 18 December 2023 and 27 February 2024, as well as the adverse fitness report for the reporting period 1 July 2023 to 31 December 2023. You contend that an Administrative Separation (ADSEP) board “for [the] two 6105’s [you] received” determined there was no basis for a pattern of misconduct and no basis for the Page 11 you received 18 December 2023. Further, you contend the December counseling entry was for an arrest that happened off base and that case has not yet been adjudicated by the civilian court. Additionally, you contend the second counseling entry was issued because you were driving while on a suspended license because you had a medical emergency which required you to drive yourself to the emergency room. In summary, you contend these counseling entries “were not warranted and given in bad faith” and should be removed from your record along with the adverse fitness report received due to the December counseling entry from your “case out in town [that] has not been adjudicated yet.”

The Board, however, noted the ADSEP process is not intended as, nor does it function as, a method to overturn or invalidate other procedures or administrative actions. It is conceivable and permissible that the ADSEP and counseling processes, which have separate considerations and purposes, may arrive at different findings. The Board concluded the ADSEP board's determination does not impact the validity of the Page 11 counseling entry. Additionally, the Board considered your contention the civilian court has not adjudicated the underlying misconduct of the December counseling entry but, noting the civilian court's actions do not preclude the Commanding Officer (CO) from taking appropriate administrative action, determined the CO was within his discretionary authority to determine a 6105 counseling entry was warranted and also to determine the timing of such entry in order to maintain good order and discipline.

After a full review, the Board determined the counseling entries create a permanent record of matters your CO deemed significant enough to document. The Board noted the entries 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 for the 27 February 2024 entry and that statement is properly included with the counseling entry in your official military personnel file. Further, the Board noted the entries were appropriately issued by a CO as evidenced by his signature on the entries. 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. Based on the available evidence, the Board concluded you have provided insufficient evidence to overcome the presumption of regularity attached to the contested counseling entries or to establish that the CO's decisions were unjust or materially in error. The Board concluded the contested Page 11 counseling entries are valid as written and should remain in your record. In keeping with its determination, the Board also determined there was insufficient evidence of an error or injustice in the issuance of the adverse fitness report. Based on the available evidence, the Board concluded there was insufficient evidence of an error or injustice to warrant 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,

9/25/2024

