



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. 8467-24
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 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.

The Board carefully considered your request to remove your 17 May 2021 and 6 August 2021 Administrative Remarks (Page 11) counseling entries and associated rebuttal statements. The Board considered your contention that the 17 May 2021 counseling entry was issued unjustly after you were found not guilty in civilian court. You also contend that you have witness statements for the 6 August 2021 counseling entry. You further contend the counseling entries were likely retaliatory and intended to justify an unfounded administrative separation, which was twice rejected by base legal. For consideration, you provided a statement submitted for review of your background investigation.

The Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a 6105 page 11 entry on 17 May 2021 counseling you for physically controlling a vehicle recklessly, and while drunk, causing you to get detained by civilian authorities and being absent from your unit. On 6 August 2021, you were issued a 6105 page 11 entry counseling you concerning your relief from duties as the S-1 Staff Noncommissioned Officer in Charge (SNCOIC) due to a loss of trust and confidence in your ability to lead Marines. You were also counseled regarding your failure to inform the

Officer-in- Charge (OIC) that you were out of bounds during pre-surgery restriction of movement (ROM), your inability to make sound judgments, and your consistent inability as SNCOIC to make sound decisions. The Board also noted that you acknowledged both entries and elected to submit statements, which are properly filed in your official record. The Board determined that your contested counseling entries were written and issued according to the MARCORSEPMAN. Specifically, the entries 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. Moreover, your former commanding officers (COs) signed the entries and determined that your substandard performance/misconduct was a matter essential to record, as it was their right to do.

Concerning your 17 May 2021 counseling entry, the Board noted that the Marine Corps Individual Records Administration Manual directs commanders make a record book entry after counseling a Marine for any alcohol-related misconduct or unsatisfactory performance. The Board also noted that your fitness report for the reporting period 1 January 2021 to 20 August 2021 indicates that you pleaded guilty, and you were found guilty in a civilian court for driving left of the centerline. Your reporting chain determined alcohol was a factor after reading the arrest report, which stated that you had bloodshot eyes, smelled of alcohol, were unable to control the vehicle within the traffic lines, failed a field sobriety test, and refused to provide a breath sample. The Board determined that the counseling entry properly documented the facts related to your traffic stop and subsequent detainment on 2 November 2020. The Board determined that your CO was not prohibited from documenting your alcohol related incident after adjudication in your purported civil court case.

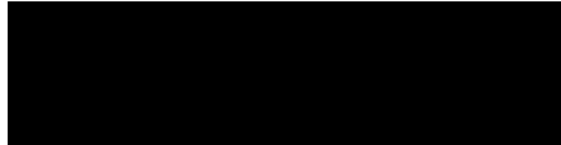
Concerning your 6 August 2021 counseling entry, the Board considered your rebuttal and witness statements; however, the Board determined that your relief as S-1 SNCOIC was not solely for the pre-surgery ROM incident. In this regard, the Board noted the CO's statement that you submitted an address in the local area, but you were found to be outside the local area, which was not approved. The Board also noted that you were counseled for additional conduct-related issues that included office behavior and "timely reporting to work," in spite of being verbally counseled multiple times. The Board also determined that your CO acted within his lawful discretionary authority when relieving you as the S-1 SNCOIC for loss of trust and confidence.

The Board determined that your counseling entries are valid and properly filed in accordance with applicable regulations. The Board found no evidence that your counseling entries were retaliatory and intended to justify an unfounded administrative separation, and you provided none. The Board also found no evidence that you were processed for administrative separation. The Board 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. 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



Executive Director

Signed by: ██████████