



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. 8721-24
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 3 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.

The Board carefully considered your request to remove your 15 November 2023 Administrative Remarks (Page 11) counseling entry. The Board considered your claims that the counseling entry was maliciously filed by a staff non-commissioned officer who has been separated due to a substantiated equal opportunity (EO) complaint you filed concerning discrimination. You further explain the counseling entry was a main point in the investigation, which stemmed from your EO complaint, but remains in your official military personnel file. Next, the Board considered your claims that you were told you were being not recommended for promotion by a promotion panel which took place in December of 2023 and when you were called in for the counseling, the counseling entry was backdated to November of 2023, before the promotion panel took place but was somehow the result of the board that occurred a month later.

The Board noted pursuant to the Marine Corps Individual Records Administration Manual (IRAM), you were issued a counseling notifying you that you were eligible but not recommended for promotion to sergeant for the first quarter calendar year 2024 promotion period due to physical fitness shortcomings and determined that the contested counseling entry was written and issued in accordance with the IRAM. Specifically, the counseling entry provided written notification concerning your deficiencies and afforded you the opportunity to submit a rebuttal. Moreover, your commanding officer (CO) signed the entry, and he/she

determined that your substandard performance/misconduct was a matter essential to record, as it was his/her right to do.

In regards to your contention that the counseling entry was maliciously filed by a SNCO who was later separated based upon a substantiated equal opportunity (EO), the Board determined, other than your personal statement and your claims, you provided insufficient evidence to support this claim. Furthermore, the Board noted pursuant with para 3005 of the IRAM, when a Marine refuses to acknowledge the entry by signing the counseling, the Marine forfeits the opportunity to make a rebuttal statement. 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 the CO was well within their discretionary authority to issue the counseling entry and that it met the requisite counseling requirements as established in the IRAM and Marine Corps Enlisted Promotions Manual.

As a result, 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,

9/25/2024

