



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. 8996-24
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 24 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.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will 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 20 October 2023 and 22 November 2023 Administrative Remarks 6105 (Page 11) counseling entry, and rebuttal statement. You also request to update the Administrative Separation Board (ASB) findings and recommendation worksheet, reinstatement to Marine Combat Instructor School or a class seat to the first available course, and reimbursement of Special Duty Assignment (SDA) pay from 1 February 2024. You further request the removal of your fitness report for the reporting period 20 July 2023 to 23 October 2023, Total Force Retention System Careerist Reserve Relief for Cause entry, and your biometrics. The Board considered your statement and contention that the relief for cause and adverse material should be reversed based on the findings and recommendations of the ASB. You claim the allegations that formed the basis for the Commander's decision were not substantiated. You also claim the Sergeant Major (SgtMaj) tried to intimidate you and

disregarded your intent to continue being an instructor. As evidence of favoritism, you cited purported misconduct by other Marines and the commands response.

The Board noted that pursuant to the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), on 20 October 2023, you were issued a 6105 page 11 entry notifying you of your relief for cause as a Combat Instructor. The entry noted that your relief for cause was due to the Battalion Commander's loss of trust and confidence in you to effectively perform in a supervisory or training role due to your recent detainment for domestic violence and pending courts-martial. The Board also noted that you acknowledged the counseling entry and elected not to submit a statement. The Board determined the contested counseling entry was written and properly issued according to the MARCORSEPMAN. Specifically, the entry provided written notification concerning your deficiencies, specific recommendations for corrective action, where to seek assistance, consequences for failure to take corrective action, and it afforded you the opportunity to submit a rebuttal. Moreover, your Commanding Officer (CO) signed the entry, and determined your misconduct was a matter essential to record; as it was his/her right to do.

Concerning your 22 November 2023 counseling entry for assaulting your spouse, after a review of your official record, it was noted that the counseling entry is not present. Accordingly, there is no action for the Board to adjudicate at this time.

Concerning the findings by your administrative separation board (ASB), the Board noted that your ASB board unanimously found that a preponderance of evidence did not prove any of the acts or omissions alleged and recommended your retention in the Marine Corps. The Board, however, determined that ASBs are convened with the fundamental purpose of determining your suitability to serve based on conduct and the ability to meet and maintain the required standards of performance. The administrative separation process is an administrative employment process and is not intended to, nor does it function as a method to overturn or invalidate properly adjudicated administrative actions. Although the ASB did not find sufficient evidence to warrant separation, that finding does not affect the validity of your counseling entry, your relief for cause or the termination of your SDA pay. The Board also determined that it is not a material error or injustice for two separate fact-finding bodies to arrive at different conclusions; therefore, the ASB's finding is not binding on your CO's authority.

Other than your statement, the Board found no evidence of intimidation or favoritism and you provided none. The Board determined that your CO acted properly and within his discretionary authority when relieving you for cause. The Board also determined that your CO was best situated to weigh the facts and circumstances of your case when relieving you as a Marine Combat Instructor, issuing your counseling entry and terminating your SDA pay. 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.

Concerning your request to update the ASB findings and recommendation, the Board determined the ASB document is not in your official record nor an official source of record; therefore, no action is required by this Board. You must address your request through your chain of command and the local Forms Management Office.

Concerning reinstatement to Marine Combat Instructor School or a class seat, the Board took no action on your request. The Board has no purview concerning the eligibility for personnel to be reinstated or approved as a Marine Combat Instructor. You must address your request through your chain of command and Marine Corps SDA monitor.

Concerning your request to remove your fitness report, the Board determined that you have not exhausted your administrative remedies with the Marine Corps by petitioning the Performance Evaluation Review Board in accordance with the Marine Corps Performance Evaluation System Manual. Concerning the removal of your biometrics, the Board determined that you must exhaust your administrative remedies by submitting a request to the appropriate Provost Marshall Office.

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,

10/11/2024

