



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

█  
Docket No. 9040-24  
Ref: Signature Date

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Dear █,

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 applications, 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 to remove your 16 March 2023 Administrative Remarks (page 11) 6105 counseling entry. The Board considered your statement, claiming that charges were initially sent to courts-martial, but the prosecution withdrew the charges without prejudice once a motion to dismiss for failure to state an offense was filed. You also assert that although the charges were dropped, you were still processed for administrative separation and issued the counseling entry, which you claim you were forced to sign, for a crime that you did not commit. You believe the 6105 counseling entry should have been removed once an Administrative Separation Board (ASB) determined there was no basis for the offense in question, and that you had not, in fact, committed the crime annotated in the counseling.

The Board noted that on 16 March 2023 you were issued a 6105 counseling you for an attempted violation of Article 92 of the Uniform Code of Military Justice by wrongfully purchasing substances designated on the Department of Defense Prohibited Dietary Supplement Ingredients

List. The Board determined that the contested counseling entry was written and issued in accordance with paragraph 6105 of the Marine Corps Separation and Retirement Manual. Specifically, the counseling provided written notification concerning your deficiencies, specific recommendations for corrective action, where to seek assistance, the consequences for failure to take corrective action, and it afforded you the opportunity to submit a rebuttal, although you chose not to. In regard to your claim that you were forced to sign the counseling, the Board noted that by signing the entry, you are merely acknowledging that you have read and understood the contents, not that you agree with the contents. Regardless, if you disagreed with the counseling, you could have submitted a written rebuttal for inclusion in your official military personnel file, but you chose not to. Moreover, your commanding officer (CO) signed the counseling, and he determined that your misconduct was a matter essential to record, as it was his right to do.

In regard to your claim that charges were sent to courts-martial, which were later dismissed, the Board determined that it does not invalidate your CO's discretionary authority to issue you a counseling.

The Board noted that the ASB finding of no basis for separation does not automatically negate the CO's conclusion that you committed the misconduct. Moreover, the Board determined that the ASB is a separate process with the fundamental purpose of determining your suitability to serve on the basis of your conduct and ability to meet and maintain the required standards of performance and does not determine one's guilt or innocence. The Board determined the ASB was done in accordance with relevant policies and further determined that the ASB's findings do not invalidate the contested counseling. The Board determined the CO relied upon sufficient evidence and acted within his discretionary authority when deciding that your counseling was warranted. 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,

10/21/2024

