



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. 9540-24
Ref: Signature Date

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Dear Petitioner:

This letter is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 29 October 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 reinstate your promotion selection to the rank of gunnery sergeant (GySgt) based upon your selection by the Fiscal Year (FY) 2023 GySgt Promotion Selection Board (PSB). The Board considered your contention that revocation of promotion was unjust and based on procedural errors. Specifically, you contend that your commanding officer (CO) failed to notify the promotion selection board (PSB) or Headquarters, U. S. Marine Corps (HQMC) (MMPB-11) as required by MCO P1400.32D (MARCORPROMAN, VOL 2, ENLPROM) and MARADMIN 311/23, despite being promoted on 1 July 2023. The Board also considered your contention that a detailed report was never compiled and submitted to MMPB-11 and that you were not given a chance to review the CO's recommendation or the information supporting it, nor allowed to submit a signed rebuttal. Further, you claim that based upon the Head of Performance Branch recommendation to disapprove your Command's request for an exception to policy (ETP) that you should be allowed retain your rank. You further claim his recommendation indicates multiple administrative errors by the Command and further supports your contention of an unjust revocation. Further, the Board considered your contention that after accepting nonjudicial punishment (NJP), you were promoted to GySgt, you were never placed under a promotion restriction, and your NJP was not reported in the Marine Corps Total Force

System (MCTFS) until 25 days after the CO imposed NJP. Finally, the Board considered your assertion that the NJP was an isolated incident, with no prior or subsequent disciplinary actions, and that revoking your promotion six months later is an excessive response that could have been deferred.

The Board noted on 13 June 2023, the Commanding General (CG) imposed NJP for violation of Article 134, Extramarital Sexual Conduct of the Uniform Code of Military Justice. You were advised of your rights under Article 31 and acknowledged your right to demand trial by court martial in lieu of NJP. The Board noted that you accepted NJP, you did not submit written matters for consideration, and you did not appeal the CG's findings at NJP. On 16 June 2023, the FY 2023 GySgt PSB adjourned, and the results were released announcing your selection to GySgt. On 7 September 2023, your CO requested an ETP concerning your promotion to GySgt indicating that after NJP was imposed, the promotion restriction was not populated in MCTFS prior to the delivery of your promotion warrant. Further, the CO indicated that you were notified by telephone and given the opportunity to review the letter and provide a written statement if desired, however you declined to do so. On 12 September 2023, the CO, ██████████
██████████ forwarded your request further indicating that your promotion to GySgt was erroneous and recommending to HQMC that it be revoked. On 1 December 2023, the Deputy Commandant of the Marine Corps for Manpower and Reserve Affairs (DC M&RA) revoked the promotion.

The Board determined that your contentions lack merit. In this regard, the Board noted pursuant with paragraph 1204.44k of the MARCORPROMAN, VOL 2, ENLPROM, Marines are not eligible for promotion while in a probationary status due to NJP. Although a promotion restriction counseling entry was not issued in your case, the Board found that such an entry was not mandatory for enforcing the promotion restrictions. Furthermore, the Board determined that once the command realized you were erroneously promoted, your CO submitted an ETP to requesting that your promotion be revoked. The Board concluded that, despite your command's failure to issue the promotion restriction counseling entry and notify HQMC in a timely manner, the Board determined your promotion to GySgt was erroneous based upon your recent NJP.

Additionally, the Board determined that under paragraph 1204.7 of the MARCORPROMAN, VOL 2, ENLPROM, the Commandant of the Marine Corps reserves the authority to make final determination regarding promotions for all Staff Non-Commissioned Officer grades. Thus, the Board concluded that the command's delay in notifying HQMC does not invalidate the DC M&RA subsequent decision to revoke your promotion selection and determined that the DC M&RA acted within his discretionary authority when making the decision to revoke your promotion to GySgt.

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. 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,

11/21/2024

