



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

Docket No. 9996-24  
Ref: Signature Date

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 7 January 2025. 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 correct your date of reinstatement in the Marine Corps to 11 February 2021, promotion to the rank of Master Sergeant (MSgt/E-8) effective 1 May 2022, and credit for 10 days of lost leave. The Board considered that your request is based on the Board decision (Docket No. 5237-22). You claim that you were unjustly separated from the Marine Corps on 10 February 2021 due to erroneous personnel records that have been corrected. You assert that, had you not been unjustly separated, you would have been promoted on time to the rank of MSgt. Subsequently, some of your records were corrected but you were not promoted to MSgt. In support of your assertion, you cited Docket No. 7857-02 and 5603-01. In your case, you were selected for promotion to the rank of Gunnery Sergeant (GySgt/E-7) on 1 January 2018. Your promotion was reinstated and you were promoted to the rank of GySgt on 1 June 2018. Had you not been placed on the Body Composition Program (BCP), you would have been timely promoted to the rank of GySgt with the date of rank of 1 January 2018 and then

you would have been considered for promotion to the rank of MSgt; if selected, your date of rank would have been 1 May 2022.

The Board noted that you were assigned to the Marine Corps Body Composition Program (BCP) for exceeding weight standards more than 12 months after the birth of your child. Accordingly, you were issued an Administrative Remarks (Page 11) entry and adverse fitness report. The Board also noted that your anticipated promotion date to GySgt was 1 January 2018; however, you were not allowed to promote until removal from the BCP. You requested reenlistment and your reenlistment was denied due to all available boat spaces being filled by Marines who were deemed more competitive. On 10 February 2021, you were honorably discharged from the Marine Corps.

You then filed an application with this Board which was denied. You subsequently filed suit with the United States Court of Federal Claims and your case was remanded to the Board for reconsideration based upon new and material evidence. On 17 November 2022, the Board granted partial relief by removing your adverse fitness report and Page 11 entry, and directed a correction to your DD 214 by changing your grade to E-7 with a date of rank of 1 January 2018. The Marine Corps was also directed to consider any future request for reenlistment. In their decision, the Board found no error in your assignment to the BCP or in the adverse fitness report. You were not assigned to the BCP until more than 12 months after the birth of your child and regulations required you to be placed on the BCP. Because the command could not reasonably guess at the reason for your inability to meet weight standards, the Board determined there was no injustice in your assignment to BCP at the time it was administered. The Board however found an injustice in the continued presence of your BCP assignment, given the changes to Marine Corps policy shortly after the BCP assignment was made. The regulation was changed weeks after your assignment to the BCP was mandated; which would have afforded you a temporary medical exemption from the BCP. That Board determined that the removal of references to your assignment to the BCP was warranted in the interest of justice.

Based on the available evidence, the Board opined that you joined the Army Active Guard Reserve and checked into your Army unit in May 2021. Until your conditional release from the Army was approved, in December 2023, you served in the Army Active Guard Reserve in the pay grade E-6. Your reenlistment in the Marine Corps was approved and, on 15 December 2023, you were reinstated on active duty in the Marine Corps in the paygrade of E-7.

Concerning your request for reinstatement in the Marine Corps effective 11 February 2021, according to Title 10 USC Section 12102, “[t]o become an enlisted member of a reserve component a person must be enlisted as a Reserve of an armed force and subscribe to the oath prescribed by Section 502 of this title or be transferred to that component according to law.” Title 10 USC Section 502 provides the enlistment oath that each person enlisting in an armed force shall take. In addition to the oath of office, each member must complete and sign an enlistment contract. An individual must also enlist in a specific branch and that contract legally binds the individual to that branch. After a review of applicable laws under Title 10, there are no provisions that permits a service member to serve on active duty in two separate branches of the military during the same period. Moreover, since you were voluntarily serving under a binding contract with the Army, the Board does not have the authority to nullify another service contract that was legally processed and honored by your service. Your period of service in the Army is

well documented in Army service records and the Board has no authority to nullify your service in the Army Active Guard Reserve in order to make your record appear as if you served in the Marine Corps. The Board further determined that no error or injustice exist. After separation from the Army, you received any earned active duty credit toward retirement.

Concerning your request for promotion to MSgt effective 1 May 2022, the Board noted that you were promoted to GySgt on or effective 1 January 2018. Regarding the cases cited, the Board determined that you are not similarly situated as those Petitioners. In your case, your date of rank was corrected to reflect your original date of rank. Moreover, the Board has no authority to grant promotion to MSgt for periods during which you were not eligible for consideration. The Board noted that the Fiscal Year (FY) 2022 E-8 promotion selection board convened after your discharge from the Marine Corps and after you voluntarily enlisted in the Army Active Guard Reserve. After your reenlistment in the Marine Corps, the FY 2025 E-8 promotion selection board (PSB) was the first PSB for which you were eligible for consideration. Your record was properly considered by the FY 2025 E-8 PSB and you were not selected for promotion. The Board also determined that any assertion that you would have been selected had you remained on active duty in the Marine Corps is speculative.

Concerning your request to receive 10 days of lost leave, other than your discharge orders statement, “[u]pon release, after accounting for any terminal leave (if elected) and 30 days of leave to sell back, your remaining unused leave balance will be 10 days,” the Board found no evidence of your leave balance or travel settlement after your separation. The Board noted that your discharge orders indicate that you did not elect any annual or terminal leave; although you could have. During the separation process, the Board opined that you would have been advised of your leave balance and your right to take leave. The Board found no evidence that you elected to take any leave to ensure there were no days lost and there is no evidence that you were denied the opportunity to take leave. 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,

2/26/2025

the 1990s, the number of people in the United States who are 65 years of age or older is projected to increase from 20 million to 35 million, and the number of people 75 years of age or older is projected to increase from 10 million to 15 million (U.S. Census Bureau, 1996).