



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

██████████
Docket No. 10467-24
Ref: Signature Date

██████████
██████████
████████████████████

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 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 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 reinstate your promotion to gunnery sergeant (GySgt) with an effective date of rank of 1 August 2024, with all backpay and allowances. The Board considered your claim that your promotion to GySgt was “revoked by [your] chain of command after [you] were acquitted and proven innocent in court, as a result and verdict from [your] Administrative Separation Board [ASB].” You also assert that “a jury . . . found [you] to have conducted no misconduct, and that there was no basis for separation from the Marine Corps.” You also claim that you never knowingly or wrongfully ingested an illegal substance and assert that it is unfair and wrong to be punished by a biased command, and that the ASB agreed with you. Lastly, the Board considered your claim that three days after you were found “not guilty,” your command submitted a request to revoke your promotion with documentation which they withheld for more than 70 days from the date originally signed.

The Board noted that you were selected for promotion to the grade of GySgt by the Fiscal Year 2024 Promotion Selection Board on 14 March 2024. However, prior to the release of the selection results, your command had started the process to resolve the issue of your alleged violation of Article 92 of the Uniform Code of Military Justice for wrongful use of a product derived from hemp as evidenced by your positive urinalysis sample on 6 February 2024 for Delta-8 tetrahydrocannabinol. As a result of the positive urinalysis, you were notified by your commanding officer (CO) that “your appointment to Gunnery Sergeant is being revoked until all investigatory, administrative, or disciplinary proceedings are complete. At that time, a decision will be made as to what, if any, further action is necessary regarding your appointment.”

On 4 April 2024, you were issued the contested counseling for violation of Article 92 of the Uniform Code of Military Justice. Additionally, pursuant to the Marine Corps Separation and Retirement Manual, an ASB convened to hear the allegations brought against you, and to make findings and recommendations regarding your retention in the Marine Corps. The ASB recommended you be retained, and on 6 August 2024, the Commanding General directed that your retention on active duty. On 19 November 2024, the Commandant of the Marine Corps (MMPB-11) upon review and consideration of your CO's recommendation to revoke your promotion, removed your selection for promotion to GySgt.

The Board noted that you were the subject of a ASB as processing for administrative separation is mandatory for substantiated cases of illegal use of a controlled substance. The Board considered your claims that you were acquitted and proven innocent, as a result of the ASB. However, the Board noted an ASB board functions as an administrative rather than a judicial body whose purpose is the administrative elimination of unsuitable, unfit, or unqualified Marines from continued service and it does not determine guilt or innocence. The Board further determined the Commanding General's decision to retain you does not invalidate the misconduct and determined that other than your statement, you provided insufficient evidence for the Board to determine the misconduct did not occur. Moreover, the Board determined your CO relied upon sufficient evidence and acted within his or her discretionary authority when determining the misconduct occurred and when recommending your promotion be revoked.

The Board noted pursuant to MCO P1400.32D, when the commander determines a Marine who has been selected for promotion is unqualified for promotion, the Commandant of the Marine Corps will make a final determination and may act to deliver, delay, or revoke the Marine's name from the appropriate selection list. The Board determined officials acted within their discretionary authority when revoking your selection 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,

2/18/2025

