



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

██████████
Docket No. 12401-24
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 29 April 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, as well as the ██████████ advisory opinion (AO) furnished by the Marine Corps Military Personnel Law Branch (JPL) and your response to the AO.

The Board carefully considered your request for promotion to Staff Sergeant (SSgt/E-6) and restoration of all pay and entitlements. You also request that your fitness report for the reporting period 1 April 2020 to 24 June 2020 and Official Military Personnel File (OMPF) be updated. The Board considered your statement and contention that you were selected for promotion to SSgt with a scheduled promotion on 1 October 2019. You assert that the outcome of the allegations resulted in dismissal of all charges, all convicted misconduct was overturned on appeal, and you received an Honorable discharge. You claim that you did not receive a "do not promote" letter until December 2019.

In response to the AO, you argued that you were exonerated of all charges and wrongdoing by a judicial authority and the record reflects that there was no administrative action taken. The findings in your case were overturned via dismissal and set aside, your case is judicial, and you have been both factually and legally exonerated. You also argue that there are no derogatory remarks in your record, no counseling entries, or Unit Punishment Book entries. You claim that the United States Marine Corps did not follow its processes, policies, and procedures required by law and contend that your promotion should not have been delayed/revoked.

The Board noted that MARADMIN 482/19 announced your selection for promotion to SSgt by the Marine Corps Fiscal Year 2019 SSgt promotion selection board. Before your certificate of appointment to SSgt was delivered, your command requested a delay to your promotion pending the outcome of an investigation by the Naval Criminal Investigation Service (NCIS). After your conviction at Special Court-Martial (SPCM) for indecent conduct and adultery, and reduction to E-1, your selection to SSgt was administratively deleted¹. The Board noted that the United States Navy Marine Corps Court of Criminal Appeals (NMCCA) later set aside the indecent conduct charge. The NMCCA found evidence insufficient to find beyond a reasonable doubt that your actions met the requirement of taking a “substantial step” to satisfy an offense under Article 134, Uniform Code of Military Justice (UCMJ) for indecent conduct/attempted enticement offense. Regarding the charge for adultery, the military judge concluded that the Special Agent’s (SA) actions by clicking on, enlarging, searching, and seizing the photographs of Captain R. depicted in her uniform were unreasonable. On 22 August 2022, the appellate review was complete and all of your rights, privileges, and property, to include your rank of Sergeant (Sgt/E-5) were restored.

The Board, however, substantially concurred with the AO that promotion to SSgt is not warranted and a delay of your promotion was proper and done in accordance with policy given your pending court-martial. In this regard, the Board noted that your promotion to Sgt was properly restored; however, the Board determined that promotion to SSgt is not a right or privilege. Once selected for promotion, a Marine must still be deemed qualified for promotion by their commanding officer (CO). To remain qualified for promotion a Marine must continue to demonstrate, in part, leadership, professional and technical knowledge, personal conduct, moral character, and maturity. The objective of the enlisted promotion system is not only to select Marines for promotion but to ensure that only the best and fully qualified Marines are promoted.

The Board carefully considered the totality of your evidence and concurred with the AO that dismissal of your SPCM charges do not meet the Black’s Law Dictionary definition for exoneration. In this regard, the Board noted that you were properly charged with indecent conduct for attempting to induce and entice a minor to engage in sexual activity based on your interactions with an agent on the “Doublelist” website and communications with “Watching Dad.” While the NMCCA found the charge legally insufficient to sustain a conviction due to the “substantial step” requirement, the Board found no evidence you did not commit the actions that formed the basis for the investigation. Regarding the charge for adultery, the Board noted the following statement by the NMCCA:

“Having reviewed the entire record in this case, we find that the evidence presented at trial was sufficient to find Appellant guilty of adultery beyond a reasonable doubt. Thus, Appellant’s argument that the evidence was legally and factually insufficient to support his conviction for adultery lacks merit.”

The Board determined that, although the charges against you were dismissed at court-martial, there remained sufficient evidence that you committed misconduct that was sufficient to delay

¹ Per correspondence from the Marine Corps Enlisted Promotions.

your promotion. Exoneration implies more than just being released from a charge; it signifies a positive act of clearing or absolving someone from blame, potentially stating they should not have been accused in the first place. The statement by the NMCCA is clear that there was sufficient evidence to accuse you of adultery. In addition, as explained previously, the Board found no evidence you did not commit the morally objectionable actions that led to you being investigated for indecent conduct. Based on the evidence, even if charges had not been referred to court-martial, the Board determined that your conduct did not meet the personal conduct, moral character, and maturity requirements for promotion to SSgt.

Concerning correction to your OMPF, the Board found no evidence of records or documents regarding your SPCM that require correcting. Concerning your request to correct your fitness report, the Board determined that you have not exhausted your administrative remedies. In accordance with the Marine Corps Performance Evaluation System Manual, the Performance Evaluation Review Board (PERB) is the initial agency for fitness report appeals, therefore you must submit your request to the PERB prior to this Board taking any action on your request.

Moreover, the Board relies on a presumption of regularity to support the official actions of public officers, in the absence of substantial evidence to the contrary, the Board will presume that they have properly discharged their official duties. The Board found your evidence insufficient to overcome this presumption. 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,

5/15/2025

