



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

[REDACTED]  
Docket No. 1401-16  
FEB 22 2017

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD ICO  
[REDACTED] USMC, [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments  
(2) HQMC memo 1610 MMRP-13/PERB dtd 17 Feb 16  
(3) FITREP dtd 1 Oct 12  
(4) HQMC ltr 1650 REP dtd 18 Nov 15  
(5) HQMC ltr 1650 REP dtd 11 Mar 16

1. Pursuant to the provisions of reference (a) Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by modifying a Fitness Report (FITREP).

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 7 November 2016 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. On 1 October 2012, the Petitioner's Reporting Senior (RS) completed an Observed FITREP in conjunction with the Petitioner's transfer from [REDACTED]. The contested report covers the period of 1 July 2012 to 31 August 2012. See enclosure (3).

c. The contested FITREP covers a period of 62 days; per MCO P1610.7F, if a FITREP covers a period of less than 90 days the report should be Not Observed. However, there is an exception to policy that allows the RS to submit an Observed report for less than 90 days if, in their judgment, they possess sufficient observation and the basis of the observation results from meaningful personal contact and the information provided to the Commandant of the Marine Corps (CMC) is significant and provides a fair assessment of the MRO. In this case, the RS must justify why the exception to policy is being invoked in Section I. In the contested report,

the RS did in fact invoke the exception to policy by stating, "The basis of the observation results from meaningful personal contact with the MRO". See enclosure (3)

d. On 6 December 2012, the Petitioner's Reviewing Officer (RO) also attested to the fact that he had sufficient observation time and concurred with the RS's evaluation of the Petitioner. See enclosure (3)

e. On 24 November 2016, the Petitioner submitted an application to the Performance Evaluation Review Board (PERB) to have the contested report modified to show it is a Not Observed report vice an Observed report. The Petitioner states that the report should be modified due to there not being enough meaningful personal contact between the RS and himself. The Petitioner states that the RS was new to the Command and was still completing turnover with the previous Battery Commanding Officer. Additionally, the Petitioner states that he was preparing to transfer; the majority of his time was spent completing turnover with the Battery Gunnery Sergeant and then when he arrived, the new Battery First Sergeant. Also, the Petitioner states that for the last 2 weeks of the reporting period, he was the acting Battalion Sergeant Major, as he was on leave. The Petitioner states that the RS only observed him for 37 days before he detached on 31 August 2012. Lastly, the Petitioner states that he has tried getting in contact with the RO to assist with his request, however, he has retired. See enclosure (1).

f. Along with the Petitioner's application, he submitted a recommendation letter from the Reporting Senior, dated 18 November 2015, supporting the Petitioner's request to have the report changed to Not Observed. The RS states that the report should be removed due to insufficient observation time. The RS states that he did observe the Marine on day to day basis, however, the period did not exceed 89 days. Additionally, he states that the RO is currently retire, and that he recommends that Section K remain the same. See enclosure (4).

g. On 28 January 2016 the PERB denied the Petitioner's request. Per procedure, the PERB forwarded the Petitioner's application to BCNR for review and provided an advisory opinion, which also provides their reason for denial. Per the the advisory opinion, the contested report is administratively and procedurally correct as written and filed. Despite the argument of the Petitioner and the RS, the RS invoked the exception to policy on the report, and the RO clearly recognized the exception to policy by concurring with the validity of the RS's assessment. If the RS now wants to modify the decision he made more than three years ago, then he needs to seek the concurrence from the RO to modify the report from an observed report to a not observed report. See enclosure (2).

h. In response to the advisory opinion, the Petitioner has submitted another letter from the RS, recommending the FITREP be modified from an observed report to a not observed report. This time, the RS added that he only observed the Petitioner for 37 days, due to the fact that the Petitioner was filling the billet of the Battalion Sergeant Major prior to completing a permanent change of station in August 2012. Again, the RS stated that the RO is currently retired and he recommends that Section K remain the same. See enclosure (5).


## MAJORITY CONCLUSION

Upon review and consideration of all the evidence of record, and notwithstanding the contents of enclosure (2), the majority of the Board finds the existence of an injustice warranting corrective action. The majority concluded that the RS's recommendation supports the Petitioner's argument that the report should be not observed due to the RS's statement that the actual number of days observed was 37. The majority found that 37 days is not enough time for the report to be observed.

## MAJORITY RECOMMENDATION:

That Petitioner's naval record be corrected, where appropriate, to show that:

- a. The following FITREP is modified to be a not observed report vice an observed report:

<u>Date of report</u>	<u>Reporting senior</u>	<u>Period of report</u>
1 October 2012		From 20120701 to 20120831

- b. A copy of this Report of Proceedings will be filed in Petitioner's naval record.

## MINORITY CONCLUSION

After careful and conscientious consideration of the entire record, the minority of the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the minority substantially concurred with the comments contained in the advisory opinion. The minority concluded that the RS originally attested to the fact that he had meaningful personal contact with the Petitioner, and invoked the exception to policy to complete an observed report. The minority agrees that if the Petitioner and the RS wish to have the report changed to a not observed report more than three years later, concurrence from the RO would be required.

## MINORITY RECOMMENDATION

That the Petitioner's request be denied.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

  
Recorder

5. The foregoing action of the Board is submitted for your review and action.

[Redacted Signature]

Executive Director

[Redacted Signature]

Reviewed and approved ~~/disapproved~~

[Redacted Signature]

Name

3/3/17  
Date

[Redacted Signature]