



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

█
Docket No: 4135-20
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.

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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 29 June 2021. 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 also considered the 29 June 2020 advisory opinion (AO) furnished by Headquarters Marine Corps (JPL), which was previously provided to you, and your response of 28 August 2020.

In July 2007 you were relieved from your position as the battalion adjutant for 1st Battalion, █ Marine Regiment, █ as a result of substandard performance and you received an adverse fitness report for the period 1 February 2007 to 28 July 2007. You were discharged from the Marine Corps on 15 September 2010 due to non-selection to captain.

The Board carefully considered your request to remove the adverse fitness report, and subsequently to convene a special selection board for promotion to captain and any subsequent grade commensurate with time-in-rank, to reinstate you on active duty in the appropriate rank, and to receive all associated back pay and entitlements. You contend that the adverse fitness report is unjust and erroneous as it was a byproduct of toxic leadership and that your non-selection to captain was due to the unjust fitness report. You included with your petition statements from four individuals attesting to the command climate at 1/12 and your performance

as an adjutant, articles about toxic command climate and its effect on military personnel, and evidence that you suffer from Post-Traumatic Stress Disorder.

The Board noted that you are requesting reconsideration; you petitioned the Board twice and went to the Court of Federal Claims in order to remove the contested fitness report to no avail. In these previous requests you did not raise issues regarding bias or unfair treatment. The Board concurred with the AO that the material you presented as new evidence was reasonably available to you at the time of your previous submissions. It has been thirteen years since the fitness report was submitted; within the three year time limit to submit your request to the Board there were articles regarding toxic leadership and you could have provided statements from individuals who were no longer subject to [REDACTED] command. Moreover, the Board agreed with the 28 December 2009 Performance Evaluation Review Board decision that notes the reporting senior appropriately documented your performance leading up to the relief, via written counseling entries, which supported the adverse nature of the contested report. The Board found the evidence provided does not overcome the presumption of regularity to show that the reporting officials acted improperly. Consequently, the Board determined that the fitness report is administratively correct and shall remain in your official military personnel file as written.

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,

7/16/2021

[REDACTED]

Executive Director

Signed by: [REDACTED]