



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

█  
Docket No: 1937-21

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 16 November 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, as well as the 9 March 2021 decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), and the 14 January 2021 advisory opinion (AO) provided to the PERB by the Manpower Management Division Records & Performance Branch (MMRP-30). The PERB decision and the AO were provided to you on 9 March 2021, and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

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 modify your fitness report for the reporting period 9 July 2011 to 19 January 2012 by changing the reporting senior (RS) portion of your fitness report to be not observed and changing the reporting occasion to change of reporting senior (CH). If approved, you request to remove all of your failures of selection. The Board considered your contentions that there were extended periods of non-availability from 17 August 2011 to 11 December 2011 due to your pregnancy related hospitalization and convalescent/

maternity leave and you were not physically present to perform your duties for approximately 114 consecutive days. You also contend that according to the Marine Corps Performance Evaluation System (PES) Manual, 30 or more days when the Marine or RS is not physically present to perform his or her duties at the command constitute non-availability and do not count when determining minimum observation time for submission of an observed report. You claim that you were not present after maternity leave due to holiday leave and household goods pack-out before transferring, and you and your RS were not in the same physical space from 11 December 2011 to 19 January 2012, resulting in your RS having insufficient observation of your performance. You also claim that your RS was new to the command, you did not have a preexisting working relationship before your extended medical and maternity leave. As evidence, you furnished correspondence from your former RS.

The Board, however, substantially concurred with the PERB decision that your fitness report is valid and should be retained as filed. In this regard, the Board noted your periods of absence, and determined that not all of your periods of absence constituted periods of non-availability according to the PES Manual. The Board found no evidence to substantiate your periods of absence and you provided none. The Board also noted the correspondence furnished by your RS addressed to the Fiscal Year 2022 Reserve Lieutenant Colonel Promotion Selection Board and determined that your RS's correspondence to the promotion board does not constitute a formal endorsement to modify your fitness report. The Board also determined that your evidence was insufficient to warrant a substantive change to your contested fitness report. Moreover, the Board determined that according to the PES Manual, your fitness reports' transfer (TR) reporting occasion is not in error. Based on the foregoing determinations, the Board found no basis to remove your failures of selection. Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action.

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,

12/10/2021  
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Executive Director  
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