



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

█
Docket No: 2605-21
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 December 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 7 April 2021 decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), and the 8 February 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 7 April 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 remove or modify your fitness report for the reporting period 1 January 2016 to 31 December 2016 by changing the reporting senior (RS) portion of your fitness report to be not observed. If approved, you request to remove your failures of selection. The Board considered your contention that according to the Marine Corps Performance Evaluation System (PES) Manual, if the reviewing officer (RO) is the same as the previous report and the RO's evaluation of the Marine's potential has not changed, the RO may extend the report or in the event the Marines performance has changed the RO must mark Sections K-1, K-2, and K-3 according to the RO's observation of the Marine during the reporting period and provide comments in K-4. You claim that your RO observed you during three previous reporting occasions.

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 that according to the PES Manual, extended reports are intended for use when a Marines performance has not changed since the submission of the last annual fitness report and another reporting occasion comes due within 89 days. The Board determined that your contested fitness report does not meet the criteria for an extended fitness report and your RO could not independently extend your fitness report. The Board also noted that your RO marked his portion of your fitness report 'Insufficient' and determined that your RO's decision not to observe your fitness report does not invalidate your fitness report. The Board found no evidence or basis to invalidate the RS portion of your fitness report and you provided none. 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,

12/17/2021

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Deputy Director

Signed by: █