



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

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Docket No: 3736-21

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 28 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 24 May 2021 decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), and the 5 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 24 May 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.

The Board carefully considered your request to remove or modify your fitness report for the reporting period 1 June 2019 to 10 October 2019 by changing it to be adverse. The Board considered your contentions that your fitness report was issued due to a soft relief, you were not afforded the due process and scrutiny that comes with an adverse fitness report, and your reporting chain violated the Commandant of the Marine (CMC) White Letter 4-20. You also contend that your attribute marks were based on unfounded claims that led to your relief, any claims that your battalion suffered substandard performance during the Commanding General Readiness Inspection (CGRI) is unsubstantiated and any discrepancies from the CGRI would not necessarily be a direct reflection of neglect on your part. You claim that your fitness report is adverse in nature given the occasion, choice of language, and departure from the previous fitness report by your reporting officials. You also claim that you were not afforded a command

investigation after being named in a command climate survey. As evidence, you furnished your 30 September 2019 counseling/mentor statement and Permanent Change of Assignment (PCA) orders.

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, on 30 September 2019, you were issued a counseling/mentoring letter by your Commanding Officer (CO) notifying you of his positive observations, concerns, and recommendations regarding your performance. The Board also noted that the Marine Corps Performance Evaluation System (PES) Manual and NAVMC 2795 provides that leaders must counsel Marines to transmit guidance, performance standards and direction for the Marines success and development. The Board determined that your CO's counseling entry was issued according to the PES Manual and NAVMC 2795 and that the timing of your counseling, subsequent reassignment and contested fitness report are insufficient to conclude that you were relieved of your duties.

Concerning your reliance upon CMC White Letter 4-20 that provided guidance related to unregulated instances of "soft relief," the Board noted that CMC White Letter 4-20 was issued a year after your contested fitness report was processed. Even if your reassignment could be substantiated as a soft-relief, the Board determined that CMC White Letter 4-20 cannot be applied retroactively. The Board also determined that your CO was not required to convene a command investigation into the climate survey and your fitness report marks and comments were not adverse in nature. 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,

1/15/2022

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Deputy Director

Signed by: █