



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. 3768-21
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 27 January 2022. 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 by the Marine Corps Performance Evaluation Review Board (PERB) and the 6 April 2021 Advisory Opinion (AO) provided to the PERB by the Manpower Management Division Records and 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 determined your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully considered your request to remove the fitness report covering the reporting period 1 June 2019 to 2 July 2020. The Board considered your contention the report was unjust because the Reporting Senior (RS) lacked the required objectivity, did not accurately reflect your performance, and was "unfairly derogatory." You further contend the RS, without providing feedback, lowered your markings without any basis and significantly adjusted his recommendation regarding your future potential as a commander, even though your quantitative measures of effectiveness increased in many areas while virtually decreasing in none. The Board also considered your contention the command should have modified the reporting chain because

“compromising circumstances” occurred that prevented the RS from exercising professional objectivity. Specifically, you explain that you submitted an anonymous complaint against the RS due to his offensive conduct based on “race, color, and sex” which created a hostile work environment but the “confidentiality of the complaint was lost,” resulting in the RS knowing you had filed a complaint against him. You contend the fitness report was “retaliatory in nature.” Lastly, you contend the report’s impact, which was increased because it was report of your performance as a field grade commanding officer, resulted in your selection as an alternate by the command screening board.

The Board, however, substantially concurred with the AO and the PERB decision that the report is valid as written and filed, in accordance with the applicable Performance Evaluation System (PES) Manual guidance. In this regard, the Board noted the Major General in command of the Eastern Recruiting Region and nominal Reviewing Officer (RO) of the contested report, was personally involved and intimately aware of your grievances but determined the reporting chain of the report was valid. The Board further noted the PES Manual does not restrain a reporting official from reducing marks on subsequent evaluations nor require justification of a reduction. Further, the PES Manual does not specifically require a RS to comment on the future potential of a Marine, to include promotability or command, but reserves those comments for the RO’s domain. Based on these factors, the Board concluded your request is lacking in substantial evidence of error or injustice warranting removal.

You also indicate in your application that you are the victim of reprisal. The Board, however, determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC 1034. 10 USC 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy’s follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with DoD policy you have the right to request review of the Secretary of the Navy’s decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a *de novo* review and under 10 USC 1034(c) the Secretary of Defense cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Office of Legal Policy, 4000 Defense Pentagon, Washington, DC 20301-4000. Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and, a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the BCNR, therefore, please also include previously presented documentation that supports your statements.

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,

2/23/2022

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Executive Director

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