



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

██████████  
Docket No. 4120-21  
Ref: Signature Date

████████████████████  
██████████████████  
████████████████████

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 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 26 September 2019 decision by the Marine Corps Performance Evaluation Review Board (PERB), and the 15 August 2019 Advisory Opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30), which were previously provided to you.

Although you presented no new evidence from previous Board consideration, the Board carefully considered your request to remove your 30 September 2017 to 1 July 2018 Fitness Report (Fitrep). The Board considered your contentions that the previous Board interpreted the injustice as a single incident involving the Reporting Senior (RS), when in fact, the RS used both of your Fitreps as counseling tools and the Board misunderstood the First Sergeant's letter in interpreting the relationship between you and the RS as a single incident rather than the entire time you worked together. You assert the RS never spoke to you unless it was time for him to counsel you, and that there was no way for you to be "keenly aware of" your RS's expectations, as noted in the previous Board's decision. You also argue that there is sufficient evidence to believe this report and the preceding report were used as counseling tools, and there was no end to the way you were treated by the RS. You further assert the unfair treatment did not end with just one Fitrep, and no matter how hard you worked, he did not like you and you paid the price with the Fitreps received, which affected your career tremendously.

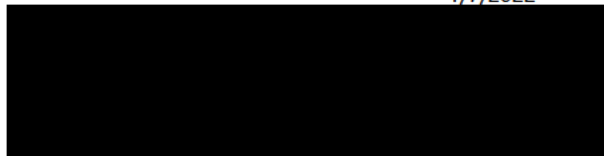
The Board, however, substantially concurred with the AO and the prior Board decision, that the Fitrep was procedurally correct as written and filed in accordance with the applicable Performance Evaluation System Manual. The Board thus concluded that your request is lacking any new or substantial evidence of error or injustice warranting removal of the contested Fitrep.

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.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

1/7/2022

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Deputy Director

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