



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: 4306-21

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 18 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 27 September 2021 decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), and the 23 August 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 27 September 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 your 19 June 2018 Administrative Remarks (page 11) 6105 entry and rebuttal statement. You also request to remove your fitness report for the reporting period 1 July 2017 to 29 June 2018 and any other derogatory material. The Board considered your contentions that: (1) your counseling and adverse fitness report resulted from not being properly treated for a major depressive disorder; (2) your medical record

noted that changes in your medication were causing you to become overly emotional; (3) a Clinical Psychologist confirmed that you were significantly and substantially undertreated for depression at the time of the incidents and your impaired mental and emotional status accounted for your atypical behavior at the time; (4) you should not have been counseled for seeking assistance from the Chaplain; (5) the counseling and adverse fitness report were an anomaly and are not indicative of your military character; (6) approximately one week after your counseling, you transferred to █ received significant support from your new command and flourished; (7) your petition warrants liberal consideration pursuant to the Secretary of Defense memo directing that liberal consideration be given to veterans seeking discharge upgrades based on claims of previously unrecognized Post Traumatic Stress Disorder (PTSD); and (8) the Marine Corps Performance Evaluation System (PES) Manual states that a reporting senior (RS) may only record misconduct in section I comments when the fitness report system is not being used in lieu of disciplinary action to make a factually weak or difficult case stick and the misconduct is relevant to the Marines overall performance.

The Board noted that pursuant to the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a page 11 entry counseling you for your inability to execute sound judgment and maintain personal bearing while executing the duties of the Headquarters Battalion Logistics Chief, for receiving a Non Punitive Letter of Caution (NPLOC) on 26 March 2018 for exhibiting poor judgment and lack of knowledge regarding orders and directives, for being verbally counseled for poor judgment, lack of bearing, lack of Military Occupational Specialty (MOS) proficiency and not understanding her role and responsibility as a Senior Enlisted Advisor to a Staff Section, for failing to inform officers about a formation honoring the out-going Company Commander, blaming others, losing your bearing, loudly complaining and speaking ill of a commissioned officer within earshot of junior and senior Marines before leaving the parade deck without permission and not responding to text messages or phone calls from her OIC. The entry also noted that the parade practice was your appointed place of duty placing you in an unauthorized absence (UA) status. The Board also noted that you acknowledged the counseling entry and elected to submit a statement. In your statement, you explained that you did not see eye-to-eye with the Logistics Officer on almost any subject and that you need to execute your officer in charge's orders and create a harmonious relationship. You also explained that you understood your failure by not informing the officers of the S-4 regarding the formation, you were not blaming, but trying to explain your point of view, you sent a text informing Capt L that you were in the Chaplain's office, and you accepted responsibility for your unfavorable actions and would seek assistance through medical professionals and Chaplains to improve your mental and emotional resiliency. The Board, however, determined that the contested entry was written and issued according to the Marine Corps Individual Records Administration Manual (IRAM). Specifically, the entry provided written notification concerning your deficiencies, specific recommendations for corrective action, where to seek assistance, the consequences for failure to take corrective action, and it afforded you the opportunity to submit a rebuttal. Moreover, your commanding officer (CO) signed the entry and determined that your misconduct was a matter essential to record, as it was his/her right to do.

Concerning the removal of your contested fitness report, the Board 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 your fitness report was marked adverse for 'Judgment' and for receiving

derogatory material during the reporting period. The Board determined that the adverse nature of your fitness report was based upon documented instances of poor judgement, loss of bearing, and substandard performance. The Board also determined that your reporting chain provided sufficient justification to support the adverse nature of your fitness report. The Board found no evidence that your fitness report was issued in lieu of disciplinary action and you provided none.

Concerning your contentions regarding your mental health diagnosis, the Board noted your 8 January 2018 medical document for a follow up to refill your prescription because you ran out of medication around Christmas. During the visit you described feeling more tearful since discontinuing your medication, you stated that you were doing well on the prescribed dosage, you felt the medication was enough to help maintain your depression and you denied any new stressors that could exacerbate your depression. The Board found your evidence insufficient to conclude that you were not being properly treated for your depressive disorder or that your medication was causing you to become overly emotional. In fact, you informed medical personnel that your current dosage was sufficient to maintain your depression. The Board also note the evaluation by the Clinical Psychologist; however, the Board determined that her evaluation was untimely, and the evaluation did not address any corresponding negative impact on your behavior during the three years between the reporting period and her evaluation. The Board determined that each reporting period is unique and there is sufficient evidence that you managed to perform adequately under the same treatment protocols during subsequent reporting periods.

Concerning your request for liberal consideration pursuant to the 25 August 2017, Secretary of Defense memo, the Board determined that there is sufficient evidence that you were diagnosed with a mental health condition; however, the Board determined that the evidence was insufficient to conclude that your mental health condition contributed to the basis for your contested page 11 entry or fitness report. Moreover, the Board relies on a presumption of regularity to support the official action of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. The Board found your evidence insufficient to overcome this presumption. 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,

2/4/2022

[REDACTED]

Executive Director

[REDACTED]