



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

█  
Docket No. 4558-21  
Docket No. 5715-21  
Ref: Signature Date



Dear Petitioner:

This is in reference to your applications 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 applications, 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 applications have been denied.

A three-member panel of the Board, sitting in executive session, considered your applications on 2 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 applications, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations and policies, as well as the 15 July 2021 and 27 August 2021 decisions by the Marine Corps Performance Evaluation Review Board (PERB), the 19 May 2021 and 8 July 2021 Advisory Opinions (AOs) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30), as well as the 10 September 2021 Manpower Management Division Records and Performance Branch (MMRP-50) AO. The PERB decisions and the AOs were provided to you, and you were given 30 days in which to submit a response to each AO. The Board also considered your 8 November 2021 rebuttal submitted in the form of an additional DD Form 149.

The Board determined that your personal appearance, with or without counsel, would 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 requests to remove your fitness reports for the reporting periods 15 February 2011 to 31 May 2011 and 22 June 2018 to 31 May 2019. If the Board granted your request to remove the reports, you also requested the Board remove all your failures

of selection to lieutenant colonel, and if removed, you requested the Board grant a special selection board.

The Board considered your contention the 2011 report should be removed because it was not administratively and procedurally correct in accordance with the Performance Evaluation System (PES) Manual. Specifically, you contend the Reporting Senior (RS) did not accurately and fairly assess your performance. You also contend the RS told you the report was not a representation of your performance and accomplishments. Further, since the RS did not have a profile for Marine captains at the time of processing this 2011 report, you contend it took time for the RS profile to mature and this is when you noticed the 2011 report was at the bottom of his profile. The Board also considered your contention the RS erred by not providing recommendations for promotion, assignment to resident professional military education (PME), and command opportunity but noted the missing recommendation was an oversight that has since been corrected by the PERB. The Board also considered the letters provided by the RS to the Presidents of the Fiscal Year 2020 and 2022 Lieutenant Colonel Promotion Selection Boards.

The Board, however, substantially concurred with the 19 May 2021 AO and the 15 July 2021 PERB Decision, and determined the 2011 report is valid as written and filed, in accordance with the applicable PES Manual guidance. In this regard, the Board determined the RS's letters of recommendation to the promotion selection boards did not constitute compelling evidence that your performance and conduct during the reporting period warranted higher grades than received and concluded your request is lacking in substantial evidence of error or injustice.

The Board further considered your contention the report ending on 31 May 2019 should be removed because it was not administratively and procedurally correct in accordance with the PES Manual. Specifically, you contend the RS erred by not identifying periods of non-availability in his section I comments. Further, in your rebuttal to the AO, you contend that keeping this report "seems to create a double standard" because a previous Board made an exception to policy and removed a similar fitness report.

The Board noted the PERB modified the report ending on 31 May 2019 by adding the following comment to section I: "Directed Comment: MRO period of non-availability from 20180622 to 20180725 due to PCS, travel, delay, and leave." The Board, thus substantially concurred with the AO and the PERB Decision that the report, as modified by the PERB, is valid as written and filed, in accordance with applicable PES Manual guidance. Specifically the Board determined the administrative oversight does not invalidate the challenged fitness report and further noted that with the addition of the comment, your contention for why the report should be removed is resolved. The Board further noted that each case is evaluated on its own specific facts and a decision in another case does not create binding precedent. The Board concluded your request is lacking in substantial evidence of error or injustice.

Lastly, the Board substantially concurred with the MMRP-50 AO that the administrative changes made to your report ending 31 May 2019 does not meet the threshold for positive correction significant enough to have altered the promotion selection boards' decisions. Specifically, the added period of non-availability adjusted the assessed period of observation from an 11 month

period to 10 months, with no change to the Reviewing Officials' marks, and no impact to the Master Brief Sheet tables.

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,

12/21/2021

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Deputy Director

Signed by: 