



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: 4644-21
Docket No: 4654-21
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.

Although your applications were not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your applications on their merits. A three-member panel of the Board, sitting in executive session, considered your application on 3 February 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 the 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 15 July 2021 decisions by the Marine Corps Performance Evaluation Review Board (PERB), and the 4 February and 30 March 2021 Advisory Opinions (AOs) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30). The PERB decisions and AO's were provided to you on 15 July 2021. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

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 request to modify your fitness report (Fitrep) for the reporting period 1 November 2009 to 1 February 2010 by changing it from "observed" to "not observed." The Board considered your contention that the Fitrep does not meet minimum observation time because there were 40 consecutive days that you were separated from the Reporting Senior (RS).

The Board, however, substantially concurred with the 4 February 2021 AO and the PERB's finding 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 dates you provided, in which you assert should be counted towards non-availability, were not documented as periods of non-availability, and are not considered as such in the PES Manual.

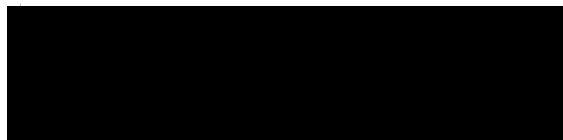
The Board also carefully considered your request to modify your 19 February 2016 to 31 May 2016 Fitrep by changing it from "observed" to "not observed." You contend that the Fitrep does not meet minimum observation time because there were 31 consecutive days that you were separated from the RS. You also assert that you applied for, received command endorsement, and was selected for a rigorous Naval Postgraduate School Distance Learning Master's Degree that started during the reporting period. You assert that at the start of the program, you were authorized 31 consecutive days to devote to your student responsibilities that should not have been recorded as observed time.

The Board, however, substantially concurred with the 30 March 2021 AO and the PERB's finding that the report is valid as written and filed, in accordance with the applicable PES Manual guidance. Moreover, Section I comments of the Fitrep omits any mention of any non-availability periods and you failed to provide any evidence, beyond your own statement and endorsements from both the RS and Reviewing Officer (RO), of facts that were unknown by the reporting officials at the time of report processing. The Board thus concluded that your evidence is not sufficient to warrant relief.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon the 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,

2/18/2022

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Deputy Director

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