



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. 4674-21
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 13 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 23 July 2021 decision by the Marine Corps Performance Evaluation Review Board (PERB), and the 14 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 23 July 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 carefully considered your request to modify your 1 June 2019 to 12 September 2019 Fitness Report by changing the report from "Observed" to "Non-Observed." The Board further considered your request to remove all your failures of selection to Major. The Board also noted that the contested fitness report was available for consideration by the promotion selection board for Fiscal Year (FY) 2022, which you contend caused an injustice and may have affected your selection for promotion. In light of the results of the FY 2023 promotion selection board, the Board also considered your most recent failure of selection. The Board considered your contention that the observation period did not meet the minimum observation required by the Performance Evaluation System (PES) Manual. You further contend that the reporting period covered 104 days; however, the Reporting Senior (RS) was unable to observe you for a total of 41 days because you were deployed at the start and the RS did not join the unit until the 18th day, a difference of 17 days, and you were in a temporary additional duty status for a period of 14 days and 10 days.

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 PES Manual guidance. Specifically, that your contention of purported non-availability did not constitute formal periods of non-availability for minimum observation purposes. The Board noted your preceding report was written by the same RS for a 12-month period for the same duty assignment and therefore, maintained a certain familiarity with your performance, professional qualities, and potential over the course of two reporting periods. The Board thus concluded that your request is lacking in substantial evidence of error or injustice warranting modification of this report and as such, removing all failures of selection to Major is not warranted.

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,

1/28/2022

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Signed by:

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