



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: 4729-21

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 8 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 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 furnished by the Marine Corps Performance Evaluation Review Board (PERB), and the 18 May 2021 advisory opinion (AO) provided to the PERB by the Manpower Management Division Records & Performance Branch (MMRP-30) and your response to the AO.

The Board carefully considered your request to remove your fitness report for the reporting period 1 June 2019 to 10 June 2019. The Board considered your contention that the reporting chain committed significant procedural errors that violated the Marine Corps Performance Evaluation System (PES) Manual and prevented the Third Officer Sigher (3OS) from submitting the fitness report to the record. Specifically, your reporting chain was modified without sufficient justification and the reviewing officer (RO) failed to return the report to you for acknowledgment. You claim that the 3OS was required to return the fitness report to the RO for correction if a procedural error exist.

The Board, however, 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 Disciplinary Action, specifically, for being found guilty of failure or refusal to comply with demand, Canadian Criminal Code 320.15(1), an offense associated with the

testing for the presence of alcohol or drugs while operating a motor vehicle and for being removed from your position as the Marine Officer Instructor (MOI). The Board also noted your statement in rebuttal to your reporting senior's (RS's) comments, in which you took full responsibility for your failure to uphold Marine Corps and societal standards, allowed yourself to develop a severe problem, and refused to seek help that would have prevented this failure. The Board further noted that according to the Marine Corps Performance Evaluation System (PES) Manual, the RS must submit a Commandant Directed (DC) report when a Marine is convicted in a civilian criminal court of an offense prosecutable under the Uniform Code of Military Justice (UCMJ). The Board determined that your adverse fitness report was appropriately submitted as a result of your misconduct.

Concerning your contention that the reporting chain was modified without justification, the Board considered that you were assigned temporarily to the Inspector & Instructor (I&I) Staff pending the adjudication of your misconduct. The Board also considered that your fitness report was not observed and written to appropriately document your misconduct as required by the PES Manual. Based on these factors, the Board also determined that your reporting chain was not inappropriately modified since your reporting officials were the commanding officer and executive officer of your permanent duty assignment. As such, they were authorized to prepare and submit your contested fitness report. The Board further determined that although the circumstances of your temporary assignment was not typical, your parent command was authorized to document your misconduct. Based on these findings and the totality of the circumstances of your case, the Board determined that the preponderance of evidence does not support your argument that your reporting chain was modified without sufficient justification.

Concerning your contention that your RO failed to submit the report to you for comment, the Board noted that your RO's comments were brief, concurred with the RS's comments, and did not include any additional misconduct for you to refute. Based on these factors, the Board determined that you were not unduly prejudiced and your ability to provide a statement would not have influenced the adverse nature of your fitness report, especially in light of your acceptance of responsibility in the report. The Board also noted that the 3OS found no factual differences requiring resolution and determined that he had no reason to return the report to the RO. In making these findings, the Board also considered your response to the AO in which you argued that because you never returned to your permanent duty station, your reporting chain was improper, and the RO was required to return the report to you to ensure transparency. The Board determined that these arguments were insufficient to substantiate your contentions regarding procedural errors based on the aforementioned rationale. 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,

2/23/2022

[REDACTED]

Executive Director

Signed by [REDACTED]