



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

█  
Docket No: 5328-21  
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 15 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 11 August 2021 decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), and the 26 April 2021 advisory opinion (AO) provided to the PERB by the Manpower Management Division Records & Performance Branch (MMRP-13). The AO was provided to you on 11 August 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 remove your fitness report for the reporting period 28 October 2019 to 14 February 2020. The Board considered your contentions that: (a) you transferred from the command before your fitness report was processed, thus you were not available to be counseled in person; (b) the reporting senior (RS) contacted you via telephone regarding the fitness report counseling and asked if you had anything further to say; however, it was not clearly communicated that you had the right to use the Automated Performance Evaluation System (APES) to make a formal statement before the report was submitted to the reviewing officer (RO); (c) the RO never reached out to you to solicit a statement before forwarding this report to the Third Officer Sighter; (d) if you had been able to make a statement concerning the circumstances surrounding the fitness report you do not believe that it would have been adverse in nature; and (e) the fitness report overlaps with another evaluation.

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 you were issued an Administrative Remarks (page 11) 6105 entry counseling you for willfully not submitting a graded assignment and for refusing to train. The Board also noted that you acknowledged the entry and elected not to submit a statement. The Board noted, too, that your fitness report was marked adverse for receiving derogatory material, your reporting chain appropriately justified the basis for adversity, and commented that you were notified of the adverse nature of the report, offered an opportunity to make a statement on the report and you declined. The Board found no evidence to support the removal of your fitness report and you provided none. The Board determined that your fitness report was prepared and submitted according to the Marine Corps Performance Evaluation System Manual. 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,

2/25/2022

