



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: 5701-21

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 1 March 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 27 August 2021 decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), the 2 July 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 27 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 modify your fitness report for the reporting period 22 August 2020 to 31 December 2020 to include a period of non-availability. The Board considered your contention that your fitness report did not include a period of non-availability while enrolled in the Expeditionary Warfare School Blended Seminar Program (EWSBSP). You also contend that the inclusion of the period of non-availability would reduce the period of observation to under 90 days, resulting in a not observed report. You claim that according to the Marine Corps Performance Evaluation System (PES) Manual, periods of non-availability are 30 or more consecutive days when the Marine or reporting senior (RS) was not available to perform his or her duties at the command. As evidence, you furnished emails from the Associate Dean of Academics and correspondence from your former RS.

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 enrolled in the EWSBSP online synchronous training program. The Board also noted that according to 3 August 2020 email, you remained at your current duty location, you were required to participate in each class, the classes were conducted during the workday, and the expectation was that you would be online for a minimum of three hours each day. The Board determined that your enrollment in the online EWSBSP did not require you to be absent and/or unavailable to perform your duties and, therefore, did not constitute a period of non-availability. Moreover, the Board found the evidence you provided insufficient to warrant a modification to your contested fitness report. 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,

3/11/2022

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Executive Director
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