



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

█
Docket No: 5728-21
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 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 18 August 2021 advisory opinion (AO) provided to the PERB by the Manpower Management Division Records & Performance Branch (MMRP-13) and your response to the AO.

The Board carefully considered your request to remove your fitness report for the reporting period 13 August 2018 to 24 August 2018. The Board considered your contention that your fitness report was marked adverse for an incident that you were marked down for during the previous reporting period. You also contend that your previous fitness report for the reporting period 23 June 2018 to 6 August 2018 was marked "B" for all attributes and addressed your performance during the firing incident. You believe that the command influenced your reporting senior (RS) to issue the adverse fitness report, despite the event occurring outside of the reporting period. You claim that your RS was not the RS during the firing incident, he did not observe your performance, and the reviewing officer (RO) knew of the firing incident and finalized the investigation when he signed both fitness reports. In your response to the AO, you argued that you should not have two negative fitness report for one incident. You also argued that your 23 June 2018 to 6 August 2018 fitness report was the definition of "damn with faint praise" and was directly a result of the firing incident.

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 preceding observed fitness report for the reporting period 23 June 2018 to 6 August 2018 did not contain any comments that specifically addressed the firing incident. The Board determined that your previous fitness report, while marginal, was not prepared to avoid issuing an adverse fitness report, and your reporting officials simply did not yet have the finalized and substantiated Artillery Battalion Command Safety Investigation. The Board also determined that once the 9 August 2018 Artillery Battalion Command Safety Investigation was completed and your substandard performance was substantiated, your reporting officials issued your contested fitness report to document the circumstances that occurred during the firing incident and the basis for your relief for cause. The Board further determined that your reporting officials sufficiently justified the adverse nature for your fitness report and provided the factual basis for the fitness report according to the Marine Corps Performance Evaluation System (PES) 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,

3/11/2022

