




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


Docket No. 5802-21
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 24 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 13 September 2021 decision by the Marine Corps Performance Evaluation Review Board (PERB), the 23 August 2021 Advisory Opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30), and the 2 June 2021 AO provided to MMRP-30 by Headquarters Marine Corps (JPL).

The Board determined your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully considered your request to remove the fitness report covering the reporting period 1 July 2019 to 22 May 2020. The Board considered your contention the primary bases used to render the report adverse, the Command Investigation (CI) and Preliminary Inquiry (PI), were in error and unjust. Specifically, you contend the CI, which was completed on 28 May 2020, six days after your transfer and the end of the reporting period for the contested report, should not have been referenced in the fitness report. Further, you contend the PI, which is referred to throughout the fitness report, can no longer be located and the 52 pages of inappropriate messages, pictures, media evidence, and personal testimonies from the Investigating Officer (IO) cannot be corroborated. Additionally, you contend there are substantive corrections that are needed throughout the fitness report and their presence creates

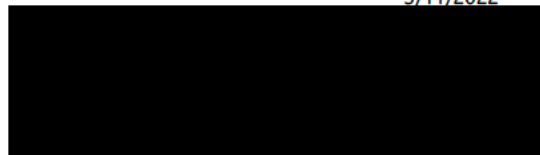
errors and injustices that warrant removal of the fitness report. Specifically, you contend you were not read your rights before the IO for the PI questioned you. You further contend the IO for the PI was not designated in writing and, while the absence of the designation letter does not change the 52 pages of messaging, the letter would have allowed you to provide “context” for those pages. You also contend a “second signing of the 6105” was required because you changed your mind regarding whether to submit a rebuttal but the signing never occurred.

The Board noted the PERB modified the contested fitness report by removing the justification language of Section F-3 that references the CI. The Board, thus substantially concurred with the MMRP-30 AO and the PERB Decision that the report, as modified by the PERB, is valid as written and filed, in accordance with the applicable Performance Evaluation System (PES) Manual guidance. Specifically, the Board substantially concurred with the JPL AO that referencing a pending CI is a material error warranting substantive correction. However, the Board also concurred with the JPL AO’s determination your Article 31(b) rights were not violated nor is a designation letter required for a PI and concluded these contentions lacked sufficient evidence of an error or injustice warranting relief. Relying on both AOs, the Board concluded the PERB modification corrected the error of referencing the CI in the contested report. The Board also concurred with the MMRP-30’s AO that full redaction of every specific reference to the CI is untenable as it would completely remove a central thesis of your fitness report rebuttal statement and render the report as discordant. The Board thus concluded the report, as modified by the PERB, is valid, and there is insufficient evidence of an error or injustice warranting removal of the contested report.

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

Signed by: 