



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: 5820-21

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 13 September 2021 decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), the 26 August 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 13 September 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.

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

The Board carefully considered your request to remove your fitness report for the reporting period 16 November 2019 to 30 June 2020. The Board considered your contention that your attribute marks and comments are unjust because you were penalized for enforcing Marine Corps uniform regulations during a training session by telling a Marine that her physical fitness attire was in violation of regulations and it was inappropriate for her to expose herself. You also

contend that you were not afforded counseling to correct your behavior before the adverse page 11 entry and fitness report were issued. You further contend that your reporting senior's (RS's) statement that you have been an above average performer and your reviewing officer's (RO's) statement that the alleged misconduct was an abnormality, are inconsistent with an adverse report. You claim that you were never received the investigation report or similar document and, after you refused non-judicial punishment (NJP), your commander issued an adverse counseling entry for inclusion in your record. You opined that, at worst, your correction of the Marine was blunt and a minor flaw or mistake.

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 a page 11 entry for wrongfully making offensive and inappropriate comments that were sexual in nature towards a non-commissioned officer and your use of inappropriate language constituted a leadership failure and demonstrated poor judgement. The page 11 entry also noted that your misconduct was substantiated by the Commander, Marine Forces South and confirmed by the Commander, U.S. Marine Forces Command. The Board noted, too, that you acknowledged the entry and elected to make a statement. In your statement you argued that the entry was unjust and you read the investigation and allegations. However, the Board determined that your page 11 entry is valid and your contested fitness report was appropriately marked adverse for receiving derogatory material during the reporting period.

The Board also determined that your refusal to accept NJP and your commander's decision not to pursue a court-martial does not invalidate your fitness report, and your commander was not required to afford you the opportunity to correct your behavior before administratively documenting substantiated misconduct in the fitness report. The Board further determined that your rebuttal statement indicates that you did review the investigation report and noted you comment that "It consisted of unsubstantiated allegations by a Marine who had a motive to misrepresent the facts." The Board found your evidence insufficient to warrant the removal of your fitness report and determined that your reporting officials sufficiently justified the adverse nature of your fitness report 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,

3/15/2022

[REDACTED]

Executive Director

Signed by [REDACTED]