



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

■  
Docket No. 5836-21  
Docket No. 5838-21  
Ref: Signature Date

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■ USMC  
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Dear Petitioner:

This is in reference to your applications 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 applications, 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 applications have been denied.

Although your applications were not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your applications on their merits. A three-member panel of the Board, sitting in executive session, considered your applications on 13 January 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 applications, 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 decisions by the Marine Corps Performance Evaluation Review Board (PERB) and the 14 April 2021 Advisory Opinions (AOs) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30). The PERB decisions and the AOs were provided to you on 13 September 2021, and you were given 30 days in which to submit responses. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

The Board carefully considered your requests to remove your fitness reports for the reporting periods 27 September 2016 to 30 June 2017 and 1 July 2017 to 19 March 2018. The Board considered your contention the reports are unjust depictions of your performance due to the heavy scrutiny you received from a highly publicized false allegation and the already strained relationship between yourself and your Reporting Senior (RS). Specifically, you contend the professional relationship became "compromised" when you were directed by the Commanding Officer (CO) to "counsel and correct" the RS's "shortcomings." In an advocacy letter submitted by the CO, he explained the strained relationship between yourself and the RS and commented the RS's evaluations for the two reporting periods were not accurate assessments of your

performance. Further, the CO stated his belief the reports were unjustly influenced by the “amplified, negative media coverage” of the false allegations levied against you.

The Board, however, substantially concurred with the AO and PERB Decision and determined the report for the 27 September 2016 to 30 June 2017 reporting period is valid as written and filed, in accordance with the applicable Performance Evaluation System (PES) Manual guidance. In this regard, the Board noted you did not specify contentions or actual inaccuracy or injustice in the report or suggest any irregularity or malfeasance with the Reviewing Officer portion. The Board noted the CO’s advocacy letter was compelling but more applicable to the Change of Reporting Senior (CH) report of 1 July 2017 to 19 March 2018.

The Board noted the PERB modified the report ending on 19 March 2018 by marking section A, Item 5b as “not observed;” section A, item 7c as “N/A;” deleting all information in section C; deleting pages 2 through 4 of the report containing sections D through H; deleting section I comments; and inserting a comment in section I stating “This report is not observed due to insufficient observation time.” The Board, thus substantially concurred with the AO and the PERB Decision that the report, as modified by the PERB, is valid as written and filed, in accordance with applicable PES Manual guidance. Specifically the Board noted the CO’s opinion the RS wrote the report “out of turn” and concurred with the AO that the RSs’ relief for cause and subsequent processing of the contested report post-relief constitute persuasive evidence to suggest the RS’s evaluation was invalid. Noting you did not contend the Reviewing Officer (RO) portion of the evaluation contained irregularity and/or malfeasance, the Board concluded removal of the entire fitness report was excessive relief.

The Board noted you selected “Reprisal/Whistleblower” in section 13 of the DD Form 149 for both NR20210005836 and NR20210005838 but did not submit specific contentions of reprisal nor do the Board records reflect a complaint being filed with an inspector general. The Board thus determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC 1034. 10 USC 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy’s follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with Department of Defense policy, you have the right to request review of the Secretary of the Navy’s decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a *de novo* review and under 10 USC 1034(c) the Secretary of Defense cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the Under Secretary of Defense for Personnel and Readiness (USD (P&R)), Office of Legal Policy, 4000 Defense Pentagon, Washington, DC 20301-4000. Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and, a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the BCNR, therefore, please also include previously presented documentation that supports your statements.

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,

2/7/2022

X

Executive Director

Signed by: