



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

██████████
Docket No. 6078-21
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 17 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.

The Board determined that your personal appearance, with or without counsel, would 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 Administrative Remarks (Page 11) entry dated 20 September 2018 and your associated rebuttal dated 21 September 2018. Although you did not request it, the Board also considered the removal of your 1 June 2018 to 6 January 2019 Fitness Report (Fitrep) as the Page 11 entry directly resulted in the adverse nature of the Fitrep, despite not exhausting all administrative remedies. The Board considered your contentions that: (a) there are errors on the part of Commander, Marine Forces Pacific as the evidence shows you were not guilty of destruction of civilian property; (b) you were inappropriately accused of "Destruction of Civilian Property;" (c) there is no evidence that you broke the window; and (d) this error has negatively affected your personal life and career, you were dealing with a divorce and separation from his kids, and you are unable to promote and be considered for command.

By signing the Page 11, your Commanding Officer indicated that he believed it to be appropriate based on the facts and circumstances, and using a preponderance of the evidence standard. The Board thus determined that the issuing officer was well within his discretionary authority to issue the counseling entry, and that the entry met the counseling requirements detailed in the Individual Records Administration Manual. The Board noted you acknowledged your misstep and took full responsibility in your rebuttal took this into consideration prior to making their decision.

The Board noted that a Page 11 is given a presumption of regularity which requires you to provide substantial evidence that the commander's decision was unjust or was materially in error. The Board further noted that you did not provide evidence to rebut this presumption of regularity. As such, the Board thus concluded that the Page 11 counseling entry does not constitute probable material error or injustice warranting removal from your OMPF.

With regard to the removal of your Fitrep, the Board noted that you acknowledged the adverse nature, did not submit a rebuttal statement, and a Third Officer Sighter adjudicated the facts of the adverse nature. The Board thus concluded that your request is lacking in substantial evidence of error or injustice warranting removal of the fitness report from your OMPF and directed that if you seek removal, to petition the Performance Evaluation Review Board for redress.

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,

3/9/2022

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Executive Director

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