



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

█
Docket No: 6573-21
Ref: Signature date

From: Chairman, Board for Correction of Naval Records5)
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF █
█

Ref: (a) 10 U.S.C. § 1552
(b) MCO 6100.13A, Marine Corps Physical Fitness and Combat Fitness Tests (PFT/CFT),
30 December 2019
(c) MCO 1610.7A, Performance Evaluation System, 1 May 2018

Encl: (1) DD Form 149 w/enclosures
(2) █ █ Group, Marine Forces Reserve Memo 5830 IO, subj: Preliminary Inquiry into the Facts and Circumstances Surrounding the Combat Fitness Test in case of [Petitioner], 11 March 2019
(3) NAVMC 188(11), Administrative Remarks, 15 February 2019
(4) Petitioner's Memo 6100 █ subj: Written Rebuttal Regarding Page Eleven Entry dated 20190215, 22 February 2019
(5) █ Group, Marine Forces Reserve Memo 5000 CG, subj: Preliminary Inquiry into the Facts and Circumstances Surrounding the Combat Fitness Test in case of [Petitioner], 28 February 2019
(6) █ Group, Marine Forces Reserve Memo 5800 CG, subj: Preliminary Inquiry into the Facts and Circumstances Surrounding the Combat Fitness Test in case of [Petitioner] [First Endorsement of Enclosure (2)], 16 April 2019
(7) █ Group, Marine Forces Reserve Memo 1000-34 CMFR, subj: Request Appeal of Convening Authority's Final Decision ICO DASH Case Number █ 5 August 2020
(8) NAVMC 10835B, USMC Fitness Report, FITREP ID #2867025
(9) Petitioner's Memo 1610 CBRN, subj: Request for Removal of Fitness Report #2867025, 1 May 2021
(10) MMRP-30 Memo, subj: Performance Evaluation Review Board (PERB) Advisory Opinion ICO [Petitioner], 28 May 2021
(11) CMC Memo 1610 MMRP-13/PERB, subj: Performance Evaluation Review Board (PERB) Decision in the case of [Petitioner], Docket No. 380-21, 27 September 2021
(12) CMC Memo 1610 MMRP-13/PERB, subj: Performance Evaluation Review Board (PERB) Decision in the case of [Petitioner], Docket No. 380-21, 27 September 2021
(13) Petitioner's Memo 1610 CBRN, subj: Letter to BCNR regarding Performance Evaluation Review Board (PERB) Decision in the case of [Petitioner], Docket No. NR 20210006573, 26 October 2021

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records, hereinafter referred to as the Board, requesting that his naval record be corrected by removing a fitness report (FITREP) for the reporting period 1 October 2018 to 14 May 2019.

2. The Board reviewed Petitioner's allegations of error or injustice on 28 April 2022 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on Petitioner's naval record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval records, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all of the evidence of record pertaining to Petitioner's allegations of error or injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.

b. Petitioner's personal appearance, with or without counsel, would not materially add to the Board's understanding of the issues pertaining to his application. Accordingly, Petitioner's request for a personal appearance was denied.

c. On 14 December 2018, Petitioner participated in a Combat Fitness Test (CFT) with his unit. He successfully passed the "Movement to Contact" and "Ammo Can Lift" events; however, he experienced a low grade tendon tear in his left shoulder while conduct the fourth leg of the "Maneuver Under Fire" event. Petitioner completed the event before seeking medical attention. He was then notified that he failed the "Maneuver Under Fire" event with a time of 3:54.¹ See enclosure (2).

d. On 15 February 2019, Petitioner received a 6105 Counseling Entry documenting his CFT failure. Petitioner elected to make statement. See enclosure (3).

e. By memorandum dated 22 February 2019, Petitioner submitted a written rebuttal to the above referenced counseling entry. In this rebuttal, Petitioner disputed the characterization of his CFT as a failure as the result of a misinterpretation of reference (b) and a misunderstanding of the circumstances of his injury. Specifically, he asserted that reference (b) did not require his CFT to be graded as complete, and that the assertion that he did not announce his injury until after his CFT score was announced was factually inaccurate. Accordingly, Petitioner requested that the counseling entry be rescinded that that a medical CFT be recorded in place of his failing score. See enclosure (4).

f. By memorandum dated 28 February 2019, a preliminary inquiry (PI) was appointed to investigate the facts and circumstances surrounding Petitioner's CFT failure. See enclosure (5).

¹ The minimum time for Petitioner's age group was 3:30.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

g. By memorandum dated 11 March 2019, the PI recommended that a partial CFT (PCFT) be run in lieu of Petitioner's CFT failure, on the condition that Petitioner provides supportive documentation to medical and it is accurately reflected in his record.² See enclosure (2).

h. By memorandum dated 16 April 2019, Petitioner's commander approved the findings and recommendations of the PI, noting that Petitioner had provided the necessary medical documentation for the command surgeon to determine that his injuries were likely caused during the CFT. Accordingly, he directed that a PCFT be entered into the Marine Corps Training Information Management System in lieu of Petitioner's failing CFT score, and that the associated counseling entry be removed from Petitioner's record. See enclosure (6).

i. By memorandum dated 5 August 2020, Petitioner's commanding general found that a named senior noncommissioned officer (SNCO) had harassed Petitioner in April 2019 by posting a mock award pertaining to Petitioner in the common area of the office.³ See enclosure (7).

j. On 31 May 2019, Petitioner's Reporting Senior (RS) issued him an adverse FITREP for the reporting period 1 October 2018 to 14 May 2019. The RS gave Petitioner the lowest rating in blocks D.1. (Mission Accomplishment, Performance);⁴ F.3. (Leadership, Setting the

² The PI investigating officer cited to paragraph 5c of enclosure (1) to reference (b), which states that "Marines injured during the conduct of a ... CFT may be given credit for ... a PCFT if one out of three events were completed prior to the injury."

³ This finding overruled the findings of the investigating officer appointed to investigate the incident and the concurrence of the initial disposition authority, which found that the incident did not constitute harassment in violation of MCO 5354.1E. In enclosure (8), Petitioner explained the circumstances of this harassment. Specifically, he asserted that on or about 6 March 2018 the SNCO had placed pictures of the Petitioner's former RS throughout the workplace with the intent of embarrassing Petitioner by having to continually explain who the person was and his significance to Petitioner. Petitioner asserted that this was humiliating because the SNCO was always vocal that Petitioner's experience at his previous command was worthless. Petitioner further contends that on or about 18 February 2019 a junior Marine left a note on Petitioner's desk informing him that the SNCO was targeting Petitioner with fabricated information. Finally, on or about 3 April 2019, the SNCO reportedly placed a mock "certificate of excellence" in the hallway outside of Petitioner's work space, which undermined Petitioner's billet and personal credibility and humiliated him in front of his peers and subordinates. This "certificate of excellence" was reportedly later posted to a Facebook group, of which both Petitioner and the SNCO were members.

⁴ In justifying this rating, the RS stated the following:

[Petitioner's] failure to accomplish job assignments such as the [Force Headquarters Group (FHG)] FY20 Training and Readiness (T&R) Guidance delayed the command's ability to publish guidance to subordinate units by four months. [Petitioner's] unsatisfactory performance on the FHG FY20 T&R Guidance was demonstrated by his lack of attention to detail in collating inputs from other members of the training section. The end result was a Marine junior in grade was assigned and successfully completed the project.

Despite numerous verbal and written counselings to provide an opportunity for improvement, [Petitioner's] performance still does not meet the requirements expected of a Marine SNCO. [Petitioner's] outright disregard for guidance and direction from his chain of command is contrary to good order and discipline and is a poor example to others. Supervisors must constantly micromanage [Petitioner] in the majority of duties assigned. Further, poor communication skills and lack of time management resulted in instances of deploying units not receiving required [REDACTED] individual protective equipment on time and at the required location. Numerous emails from [REDACTED] subordinate units required the intervention of the Marine Forces Reserve [REDACTED] Operations Chief to ensure subordinate units received the required gear for deployments and exercises.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Example),⁵ G.2. (Intellect and Wisdom, Decision Making Ability); and G.3. (Intellect and Wisdom, Judgment).⁶ The RS also did not recommend Petitioner for promotion.⁷ See enclosure (8).

[Petitioner] also failed to complete a corrective action report project addressing the priority of mission assurance issues which led to reassignment and completion by a Marine junior in grade. This project was addressed in his written counselings and he subsequently ignored the tasks assigned. In addition, his lack of time management and awareness with handling the submission of mission assurance data call updates via the Marine Forces Reserve mission assurance portal contributed to his total lack of awareness to the force protection posture of subordinate units.

⁵ In justifying this rating, the RS stated the following:

Despite constant micromanagement by senior officers and SNCOs he consistently fails at maintaining personal readiness required by the Marine Corps, [Petitioner] has not maintained medical readiness and has consistently been delinquent on the command's medical readiness report. Numerous emails sent by the [REDACTED] medical team documented his inability to maintain the medical fitness required by the Marine Corps. [Petitioner] was counseled via informal and formal correspondence.

His lack of due diligence in maintaining personal readiness has resulted in blatant disregard for verbal orders to complete required water survival training and semi-annual height/weight requirements. In January 2018, guidance was passed to all members of the training section to complete water survival training by 1 December 2018. All members of the training section did complete the required training except [Petitioner]. [Petitioner] was present for duty on Headquarter Battalion's published dates for scheduled water survival training and semi-annual height/weight. [Petitioner] ignored verbal direction and failed to complete required water survival training and height/weight. He last completed water survival training in 2014 and last complied with height/weight requirements on 20180619.

⁶ In justifying these ratings (for G.2. and G.3.), the RS stated the following:

[Petitioner's] inability and unwillingness to make decisions within the context of commander's intent was one reason he was dismissed from his duties. Despite the publication of a new [REDACTED] order, [Petitioner] still pressed outdated [REDACTED] training standards on subordinate units. In addition, [Petitioner] does not utilize the core values of the Marine Corps to shape and guide his judgment and decision making.

[Petitioner's] poor decision making and judgment resulted in his Government Travel Charge Card being suspended in December 2018. This prevented scheduled [REDACTED] training for a subordinate unit and required its postponement to the following month. His failure to follow the Government Travel Charge Card guidelines for the same trip resulted in [Petitioner] not filing a travel voucher until two months after the travel was completed, resulted in SNM being identified in March 2019 as pre-suspension status and past due for his GTCC bill. His inability to learn from the December 2018 Government Travel Charge Card suspension demonstrates his disregard for following the Government Travel Charge Card regulations and also proves his repeated, flawed judgment. Close supervision was required by his chain of command in order to resolve this issue.

[Petitioner's] unwillingness to perform the duties assigned to him resulted in his repeated dismissal from assigned and collateral tasks. His unwillingness to take both informal and formal guidance from his chain of command resulted in countless hours spent closely supervising this SNCO. He does not portray and further undermines the long standing reputation and reliability of SNCO leadership in the Marine Corps. He cannot be trusted to adhere to the time honored traditions of Marine Corps' core values and leadership traits. He is not recommended for promotion or retention.

⁷ In justifying this recommendation, the RS stated the following:

[Petitioner] is not recommended for promotion at this time due to his poor performance, failure to set the example required of a SNCO, flawed decision making abilities, and unsound judgment. The command gave [Petitioner] numerous opportunities to correct his deficiencies, but [Petitioner] persisted in failing to complete not just assigned tasks, but also failing to maintain the personal readiness required of all Marines per MCBUL 1500. During this time period he has ignored repeated verbal and written instruction to correct his deficiencies

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

k. On 13 June 2019, Petitioner submitted a statement in rebuttal to the adverse ratings and comments made by his RS.

(1) In response to the adverse ratings and comments in block F.3.,⁸ Petitioner asserted that he “was not responsible for the status and reliability of the medical providers nor their gear’s functionality. In the case of an appointment being scheduled and appropriate providers being absent, or gear not being functional, the best [Petitioner] may do is reschedule and wait further. Whenever a deviation from a planned appointment was made it was briefed as soon as [Petitioner] was notified.”

(2) In response to the adverse ratings and comments in block G.2. and G.3.,⁹ Petitioner asserted that he was never relieved of his duties, and that there is no paperwork or correspondence to suggest that he was ever removed from his billet or assigned duties at FHG. He further stated that he “assisted in writing MCO 3400.3H and is completely competent in speaking to its text and intent based on many conference calls with approving officials as well as collaboration with the MARFORRES C [REDACTED] Officer, MARFORRES [REDACTED] SNCOIC, and MOS members from across the entire Marine Corps. At no point was any guidance out of date, misrepresented, or changed to fit a personal opinion. Communication to all subordinate units was confirmed weekly for two months following release of the MCO 3400.3H at the [REDACTED] CoS [REDACTED] Sync conference call.” He further asserted that that “[w]hen MRO was asked to confirm that no [REDACTED] training was required of reserve units until 6 months prior to deployment MRO affirmed that statement as correct and was never directed to treat units wishing to training outside that time frame, as allowed by MCO 3400.3H, with anything other than usual enthusiastic support. Therefore, MRO maintained support and encouragement of units wishing to train in a simulated [REDACTED] environment. MRO maintained the courage to stand up for what was written in the MCO 3400.3H and MCBUL 1500 and commitment to the USMC principles of training above the standard. MRO’s judgement [sic] was in keeping with appropriate [REDACTED] orders and directives at all times.”

(3) In response to the adverse ratings and comments in block D.1.,¹⁰ Petitioner insisted that he has excellent communication skills. Specifically, he stated that “[s]ubordinate units are given tasking and timelines well in advance of deploying to any theater. When subordinate unit representatives reach out to order [REDACTED] gear they are well aware of those requirements. Required timelines for gear requests are not only briefed to all interested parties, to include the

in performance, setting the example, judgment, and decision making. After repeatedly ignoring verbal guidance he was formally counseled on three separate occasions, yet he persisted in not correcting his deficiencies despite formal counselings documented by signed counseling sheets. During this reporting period he continued in being unreliable in assigned tasks, resulting in other Marines having to complete [Petitioner’s] assigned tasks. This resulted in an unfair burden on other Marines within the section and showed [Petitioner’s] lack of commitment to mission accomplishment.

⁸ This was in response to the discussion in footnote 5 above regarding the statement that Petitioner “consistently fails at maintaining personal readiness required by the Marine Corps” despite constant micromanagement by senior officers and SNCOs.

⁹ This was in response to the discussion in footnote 6 above regarding “[Petitioner’s] inability and unwillingness to make decisions within the context of commander’s intent...”

¹⁰ This was in response to the discussion in footnote 4 above regard Petitioner’s “poor communication skills and lack of time management...”

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
[REDACTED]

[REDACTED] but are also available on the [REDACTED] Sharepoint. Detailed instructions on how to request appropriate combat stock for [REDACTED] gear are also on the [REDACTED] Sharepoint. If access to the Sharepoint [sic] is not granted to a requesting party then the MRO was always available to assist whether for a missed deadline or incorrect request. All links are included in the signature block of all MRO emails.” He further stated that “[t]here is also a [REDACTED] organizational email set up for official [REDACTED] traffic. This organizational email box was set up by MRO specifically to maintain an official record of correspondence. [REDACTED] T&R Officer and SNCOIC along with others were granted access to the [REDACTED] organizational email box and were fully aware of proper procedural conduct at all times. If at any point a subordinate unit did not receive appropriate gear prior to deploying it was a direct result of that unit not complying with established procedures outlined in the FHG FY19 Training Guidance as endorsed by the [REDACTED] T&R Officer and [REDACTED] CoS. At no point has the [REDACTED] Officer, or the [REDACTED] SNCOIC, had to step in to rectify either a dereliction of duty, or a failure of adhering to established procedures on the part of the MRO.”

(4) In response to the adverse promotion recommendation and the comments supporting this recommendation,¹¹ Petitioner asserted that his performance was not the reason that his tasks were assigned to other Marines. He stated that “[t]asks reassigned during MRO tenure at [REDACTED] were a direct result of new staff additions, attendance of a formal school, or in preparation for PCS. At no point was any other reason ever communicated to MRO. MRO does not accept responsibility for the continuance of reassignments based on unit new joins, return from school, or a change in PCS timeline. Tasks reassigned due to new joins and formal school attendance were also outside the reporting period of this report and as such have no bearing on MRO during this reporting period per PES Manual.”

(5) In response to the adverse ratings and comments in block D.1.,¹² Petitioner asserted that he was responsible, along with three other Marines, “for a perfect inspection of the Protection Division (as it is now called) program during this reporting period. Had any of the [comments supporting this rating in footnote (4)] been the case the [REDACTED] Protection Division program would never have received such an assessment from the MARFORRES Protection Division Staff. The caliber of the [REDACTED] Protection Division Program was of such high standard that MARFORRES Protection Division requested to utilize their binders and SOPs for templates that the other MSCs within MARFORRES could utilize to bring their own programs up to standard.” He further stated that “Protection Data Calls are conducted quarterly. MRO briefed for two weeks leading up to the deadline each quarter via [REDACTED] Sync conference call. MRO assumes no responsibility for the subordinate units being unwilling, unable, or simply neglecting to complete said data call on time or correctly. MRO email signature block had direct links to the PD Data Call in the event that it was required by subordinate units. FHG Corrective Action Report was in fact finished on time. When an unfavorable assessment of it was returned to MRO, he immediately identified that the version in question was weeks out of date. MRO

¹¹ This was in response to the discussion in footnote 7 above, explaining that Petitioner “is not recommended for promotion at this time due to his poor performance, failure to set the example required of a SNCO, flawed decision making abilities, and unsound judgment...”

¹² This was in response to the discussion in footnote 4 above, discussing Petitioner’s failure “to complete a corrective action report project addressing the priority of mission assurance issues which led to reassignment and completion by a Marine junior in grade...”

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

brought it to the attention of the Training & Readiness Officer. A copy of the new Corrective Action Report was immediately printed and provided to the T&R Officer so that an assessment of the latest version could be performed. That report was not returned for action.”

(6) In response to the adverse rating and comments in blocks G.2. and G.3.,¹³ Petitioner reiterated the comments discussed in paragraph 3k(4) above that “[t]asks reassigned during MRO tenure at [REDACTED] were a direct result of new staff additions, attendance of a formal school, or in preparation for PCS,” and insists that no other reason was ever communicated to him.

See enclosure (8).

l. After reviewing Petitioner’s comments described in paragraph 3k above, on 17 August 2019 the Reviewing Officer (RO) concurred with the RS evaluation of Petitioner’s performance and gave Petitioner an “Unsatisfactory” rating in his comparative assessment (block K.3.). He stated that Petitioner’s performance during the rating period covered “has fallen far short of expectations for an enlisted Marine of his current grade,” and that he had “no reservation about the fairness and impartiality of the RS’s observation, and that it is confined to the facts and circumstances occurring during the period covered by this report.”¹⁴ The RO stated that Petitioner’s leadership “objectively provided him every opportunity not only to sustain a prior accepted level of performance, but also more than ample room to grow and demonstrate worthiness for the next higher grade,” but that Petitioner “instead demonstrated little to no initiative and intent to fulfill his basic leadership responsibilities as a SNCO despite previously demonstrating that he was more than capable.” He further noted that Petitioner refused to take ownership of his failures or took any effort to correct them, and as a result he did not provide a meaningful contribution toward the unit’s mission. See enclosure (8).

m. In response to the RO’s comments discussed in paragraph 3l above, Petitioner asserted that they offer “no evidence either in [their] own favor or for MRO to address in whole or with specific comments. This continues a pattern from the original comments made by RS in which MRO is left unable to defense [sic] against comments that contain only broad generalizations and unspecific language. To that end, MRO processed 20 equipment requests for subordinate units, 2 equipment returns processed for subordinate units, conducted a successful MTT with glowing greivews from [REDACTED] ANGLICO, achieved a perfect inspection, and provided repeated professional input on force level order rewrite. Each one of these points are specific, verifiable, and speak to MRO’s meaningful impact on not only the command but the entire Marine Corps.” See enclosure (8).

n. In response to Petitioner’s rebuttal discussed in paragraph 3m above, on 26 August 2019 the RO stated that his comments were based on his “own personal observation supported by [his] further inquiry to resolve the inconsistencies and disagreements surfaced between the RS and

¹³ This was in response to the discussion in footnote 6 above regarding Petitioner’s “unwillingness to perform the duties assigned to him result[ing] in his repeated dismissal from assigned and collateral tasks...”

¹⁴ In support of this assessment, the RO noted that he had observed both the RS and Petitioner since September 2017, and that Petitioner’s substandard performance over the most period covered by this FITREP was “clearly evident” despite a “more than favorable and supportive environment for [Petitioner] to succeed both personally and professionally.”

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
[REDACTED]

[Petitioner].” He commented that solicited input from the RS and other Marines assigned to the [REDACTED] and the Marine Forces Reserve [REDACTED] Defense Officer and Chief.¹⁵ To resolve the inconsistencies and disagreements between the RS and Petitioner’s comments, the RO offered the following findings:

(1) The RS statement that Petitioner was “dismissed from his duties” was unintentionally misleading. Petitioner was never formally relieved from his position as the [REDACTED] Chief, but rather had his additional assigned duties removed during the rating period, to include his responsibility to develop the initial draft of the FHG FY20 Training and Readiness Guidance and to maintain the [REDACTED] Corrective Action Report (CAR) for tracking the status of Mission Assurance discrepancies from across all of [REDACTED]. Responsibility for the FY20 T&R Guidance was reassigned to a junior Marine, not because of the addition of any new staff members or Petitioner’s anticipated PCS as Petitioner claimed. The RO also noted that Petitioner’s substandard performance with regard to his responsibility to maintain the [REDACTED] CAR was documented in a counseling statements signed and dated by Petitioner and the RS on 28 December 2018 and 15 March 2019.

(2) With regard to Petitioner’s professional competence, the RO commented that Petitioner reviewed and submitted the initial draft of the FHG FY20 T&R Guidance with holdover language which contradicted newly published Marine Corps guidance. He further stated that Petitioner showed no intent to correct this guidance despite being provided ample opportunities to do so, and failed to inform both the RO and the RS of the change in Marine Corps guidance despite confirmation that Petitioner had been made aware of this change in guidance.

(3) With regard to Petitioner’s work performance, the RO stated that an “[e]xamination of emails and statements provided by the RS and adjacent staff members indicated a lack of sufficient staff oversight and staff action by the [Petitioner] to ensure that [REDACTED] appropriately equipped both activated and inactivated Reserve Marines and Sailors with required [REDACTED] equipment.” He further stated that email correspondence and verbal statements indicated that Petitioner’s “lack of timely and appropriate staff action created unnecessary complications in the overall effort to provide activating Marines with required [REDACTED] equipment” and that Petitioner “was not maintaining a sufficient level of situational awareness, and therefore lacked the expected knowledge to ensure timely and effective sourcing of [REDACTED] equipment to activating Reservists from [REDACTED]”¹⁶ The RO concluded that the command’s mission accomplishment with regard to Petitioner’s responsibilities in this regard was “more a credit to the proactive efforts of the [REDACTED] Marines than it was to that of the [Petitioner],” and that “there was clear indication of a significant level of degraded performance by the [Petitioner] in this area of responsibility during the time period covered by this reporting occasion.” Finally, the RO noted

¹⁵ One of these individuals who was solicited from input was the SNCO who had previously been found to have harassed Petitioner in the work place (see paragraph 3i above).

¹⁶ The RO asserted that Petitioner favored “autopilot practices enabled by network applications as a means of avoiding personal engagement and investment in a task proportionate to his level of command rank,” and that this “naturally was a primary cause of friction in the coordination effort between echelons of command, and instead of personally involving himself to fix the resulting issue/s at the [REDACTED] level the [Petitioner] appeared to be more intent on fixing the burden on agencies subordinate to [REDACTED]”

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
[REDACTED]

that the [REDACTED] Mission Assurance Team inspection which Petitioner cited as evidence of his competency occurred prior to the period covered by the FITREP.

(4) With regard to Petitioner's medical readiness, the RO found that Petitioner was due for an audiology examination on 2 November 2018, and that the command's medical staff identified this requirement on five separate occasions while the RS identified it on three separate occasions. Each of these occasions were documented in formal counselings signed by Petitioner, but Petitioner did not complete the requirement until more than five months after his first official notification. In response to Petitioner's contention that the medical providers were not available and/or that the required equipment was not available or operable, the RO noted that there were other facilities reasonably available for Petitioner to complete this annual requirement.

The RO concluded this response to Petitioner's rebuttal by stating that his "further extensive examination of the circumstances surrounding the adverse nature of this report" not only confirm his previous concurrence but "further deepened" it. See enclosure (8).

o. On 26 August 2019, Petitioner responded to the RO's response to his previous rebuttal discussed in paragraph 3n above. Specifically, he asserted that RO's comments make it apparent that the SNCO who had previously been found by Petitioner's commanding general to have harassed Petitioner (see paragraph 3i above) was "instrumental in the gathering of information which led to the above referenced report being designated adverse."¹⁷ He stated that the RS was well aware that this NCO had harassed and targeted Petitioner for humiliation within the workplace, and that the "command's solicitation of [his] input not only calls into question the accuracy and impartiality of the information he provided, but also any assessment thereof by the RS and RO toward [Petitioner]." Petitioner further asserted that "this leads [him] to believe that at no point was proper impartiality with a goal of obtaining an accurate assessment of [him] during the reporting period ever the goal of this report." Accordingly, Petitioner requested that the FITREP be made non-adverse or removed from his record altogether. See enclosure (8).

p. On 24 October 2019, the Third Officer Sighter (TOS) adjudicated the factual differences among the above referenced statements per reference (c), finding that the adverse marks for performance (block D.1.), setting the example (block F.3.), and decision making ability and judgment (blocks G.2. and G.3.) were justified. He stated that "[t]he legalistic approach taken by the [Petitioner] in response to this report is reflective of his approach to his duties throughout the reporting period." In support of this finding, the TOS made the following findings of fact:

(1) Petitioner did not contribute to the command's annual training plan at a level that is reasonably expected of his grade and occupational specialty. The RO accurately described

¹⁷ This SNCO was among those listed by the RO from whom input and information had been gathered. In addition to stating the circumstances of the harassment endured by this SNCO, Petitioner noted that this SNCO posted on Facebook on 27 June 2019 that he was upset that he had to "sift through [sic] years of emails to provide proof [that Petitioner] didn't know how to do [his] job when they rebut their fitness report." Petitioner further asserted that the SNCO sent a text to Petitioner on 15 July 2019 with a picture that said "CRYBABY SHIT ASS," and stated that he "got you a going away present." Finally, Petitioner asserted that on 5 August 2019 the SNCO insinuated in a Facebook post that Petitioner was fraudulently identifying his dog as a service animal.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Petitioner's actions in this regard (see paragraph 3n(1) above). This justifies the adverse marking in block D.1. (Performance).

(2) Petitioner failed to fulfill basic medical readiness screening standards at a time when Marines throughout the command, junior to him in rank, were able to figure it out with far less personal attention from their leadership. This justifies the adverse marking in block F.3. (Setting the Example).

(3) Petitioner placed an over-reliance on subordinate command compliance with directives and systems to fulfill his part of the command's task to prepare individuals, units, and detachment for activation and integration. Failing to cross-reference subordinate unit inputs to the SharePoint system with commonly known activations to ensure Marines were appropriately equipped with [REDACTED] gear prior to activation resulted in the need for our higher headquarters to mitigate. That reflects poor judgement for a Marine of his grade. The RO accurately described Petitioner's actions in this regard (see paragraph 3n(3) above). This justifies the adverse markings in blocks G.2. and G.3. (Decision Making Ability and Judgment).

The TOS specifically stated that he did not rely on any input from the SNCO who was found to have harassed Petitioner in reaching these findings. See enclosure (8).

q. By memorandum dated 1 May 2021, Petitioner requested that the Marine Corps Performance Evaluation Review Board (PERB) remove his FITREP for the reporting period 1 October 2018 to 14 May 2019. In this request, he asserted that the RS, ROS, and TOS all "exhibited a verifiable pattern of behavior which demonstrates retaliatory prejudice against him."¹⁸ He also asserted that the FITREP was "used in lieu of disciplinary action to "make a factually weak case stick," and that the "[r]eporting officials made false statements in an official report by asserting that they took appropriate action to investigate workplace harassment toward [Petitioner] within said fitness report."¹⁹ Petitioner also alleged that the "reporting officials engaged in a pattern of obfuscation through vague statements, omitted fact, rejected verified fact as presented by [Petitioner], and injected new accusations whenever [Petitioner] rebutted their original accusations."²⁰ Finally, Petitioner alleged that the reporting officials made false statements in his FITREP.²² See enclosure (9).

¹⁸ Petitioner claims that the resolution of Petitioner's failed CFT (see paragraphs 3c-3h above) was the likely motivation for the command's retaliatory behavior. To support this contention, Petitioner contended that the RS attempted to conduct an unofficial investigation of Petitioner's failed CFT while he was on holiday leave and without his knowledge or the opportunity to defend himself. He then accused the TOS of establishing the subsequent investigation timeline to be conducted while Petitioner was "on convalescent leave, recovering from surgery, and under the influence of narcotic medication at his home of record," and that his statement was taken by the investigating officer while he was under the influence of his prescribed narcotic medication.

¹⁹ Petitioner asserted that the TOS statement in enclosure (8) that Petitioner's allegations of harassment were "referred to the appropriate officials within [REDACTED] for inquiry" was a false statement. He also characterizes the statements made by reporting officials that Petitioner was relieved of his duties as false statements, and the finding of the TOS that the use of such language was unintentionally misleading to also be unsupported by evidence and false.

²⁰ Petitioner asserts that the RO, in describing the Petitioner's inclusion in the FY20 T&R Guidance of outdated guidance contrary to Marine Corps policy, omitted the fact that he, the RS, and the TOS all approved of the guidance in question. He also asserts that the RS and RO reliance upon input from the SNCO who had harassed Petitioner was dishonest.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

r. By memorandum dated 28 May 2021, the Headquarters, Marine Corps, Performance Evaluation Section (MMRP-30) provided an advisory opinion (AO) to the PERB, recommending that Petitioner's request be denied. This AO addressed each of Petitioner's contentions, and provided notes for the PERB's consideration of each. In support of this recommendation, the AO concluded as follows:

“[Petitioner's] petition includes voluminous extent of proffered evidence but the volume of the evidence does not correspond to valid evidence that would warrant substantive correction to the contested fitness report. First, [Petitioner] failed to provide any evidence to support the contention that the reporting chain retaliated against [him] based on the removal of a [counseling statement] and decision to overturn the command's initial assessment that [he] failed a CFT. Next, [Petitioner's] contention regarding reporting chain engagement in a pattern of obfuscation rings hollow when [his] arguments consist almost entirely of vague accusations without substantiation. Next, [Petitioner's] initial attempts at report rebuttal by obfuscation were met with repudiation by the RO, so the [Petitioner] shifted tack and attempted to project blame onto the [above referenced SNCO], albeit with some validated evidence of harassment regarding a particular incident. While not condoning, nor countenancing any harassment against the [Petitioner], as it relates to the contested fitness report, the petition omits any direct cause and effect of the validated instance of harassment, other than a blatant attempt to discredit the [SNCO] via guilt by association. Moreover, the [Petitioner] also attempts to blame the reporting chain for accepting input from the maligned [SNCO]. Further diminishing the peripheral argument is the fact that all the information provided by [Petitioner] was proffered in conjunction with the [REDACTED] Defense Officer, a Warrant Officer of Marines. It's difficult to fathom that the Warrant Officer was complicit in advancing any agenda by the [SNCO] to provide biased and/or non-factual information to be reviewed by the AC/S G-3 and Chief of Staff in their performance of official duties. Furthermore, [Petitioner's] petition lacks any evidence to suggest how the validated harassment directly impeded the [Petitioner's] ability to perform the basic functions of the assigned duties. The [Petitioner's] dismay at the thoroughness of the adjudication does not invalidate the thoroughness and completeness of the adjudication. [Petitioner] would have

²¹ With regard to Petitioner's claim that the reporting officials used vague and ambiguous language in the FITREP to describe Petitioner's unacceptable performance or deficiency in violation of reference (c), he asserts that the RS omitted the fact that Petitioner was weighed for the record no fewer than three times since the alleged date of his last height and weight measurements and that the responsible parties failed to run the measurements for record three times. He also claims that the RS omitted key facts regarding the suspension of his government travel credit card (GTCC). Specifically, he claims that the first issue in December 2018 occurred due to a lack of funding in the Line of Accounting utilized for temporary duty travel to the USMC Prior Service Recruiters School, and that he paid the card balance as soon as funds were available. He claims that the second incident was the direct result of the RS ordering Petitioner to travel without approved orders, in violation of the MARFORRES travel policy.

²² Petitioner asserted that the RO's citing of dates of written counselings to prove substandard performance were “dishonest attempts to omit facts and evidence in favor of [Petitioner's] successful performance of duties. Specifically, he states that the RO neglected to mention that the counseling dates cited immediately followed periods of leave by Petitioner, and that the monthly reports which were the subject of these counselings were, in fact, finished and approved prior to his departure on leave. With regard to the RO claims that Petitioner's lack of oversight was the primary cause of challenges for deploying Marines receiving CBRN gear, Petitioner asserts that the RO “fails to mention that [he] established a long standing SharePoint site with specific instructions and timelines for ordering CBRN gear,” and that “the SharePoint and timelines were briefed by [Petitioner] weekly at the ‘I&I Sync’ conference call with all subordinate elements present.”

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

the PERB believe that the reporting chain was waging an unfair fight against [him], when in fact, the reporting chain was responded to the [Petitioner's] escalating rebuttal approach, resulting in an exchange that the [Petitioner] ultimately lost. There is no PES Manual requirement for the reporting chain to include one point to every counterpoint, or factoid. The reporting chain assessed the [Petitioner's] performance as substandard and completed a valid evaluation thereof. The report is deemed valid as written."

Accordingly, the AO found that Petitioner had "not met the burden of proof, nor shown by preponderance of the evidence probable material error, substantive inaccuracy, or injustice, warranting removal of the FITREP," and recommended that his request should therefore be denied. See enclosure (10).

s. On 27 September 2021, the majority of the PERB determined that Petitioner did not demonstrate probable material error, substantive inaccuracy, or injustice warranting the removal or modification of the FITREP in accordance with reference (c), and therefore directed that the FITREP be retained as filed. See enclosure (11).

t. By memorandum dated 27 September 2021, the PERB forwarded Petitioner's application to the Board for consideration pursuant to reference (c). See enclosure (12).

u. By memorandum dated 26 October 2021, Petitioner forwarded matters to the Board responding to the PERB's denial of his application and the AO provided by MMRP-30. He asserts that the PERB failed to consider the matters that he raised, and questioned the "impartiality and clear headedness" of the author of the AO. He then attempted to make a point-by-point refutation of every comment made in the AO to address his contentions, going so far as to include the Oxford English Dictionary definition of the word "factoid" as involving trivial information to suggest that its use was "intemperate, spiteful, and completely inappropriate." He concluded by reiterating his "overwhelming belief that RS, RO, and [TOS] acted in concert to create an inappropriately adverse fitness report." See enclosure (13).

CONCLUSION:

Upon careful review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting corrective action.

The Board did not find sufficient evidence to support Petitioner's contention that the rating officials demonstrated a "retaliatory prejudice" against Petitioner. There was no reason to doubt that the content of the FITREP in question represented the rating official's honest assessment of Petitioner's performance during the observed rating period, and Petitioner did not effectively disprove any of the specific bases for the adverse ratings made against him. Petitioner also failed to provide any evidence or logic to suggest why the removal of Petitioner's counseling statement pertaining to his CFT failure would motivate the rating officials to make false statements or to issue him an unwarranted adverse FITREP. This argument was supported by many words, but no actual evidence.



Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
[REDACTED]

The Board also found no merit in Petitioner's contention that the reporting officials engaged "in a pattern of obfuscation through vague statements, omitted fact, rejected verified fact as presented by [him], and injected new accusations whenever [he] rebutted their original accusations." There was nothing vague about the comments made by the rating officials in the FITREP. Their assessment of Petitioner's substandard performance was clear, and supported by specific incidents. Petitioner's contention that the reporting officials omitted key facts was also unpersuasive, as it was not the reporting officials' responsibility to make Petitioner's case that their assessment of his performance was inaccurate. Petitioner had the opportunity to make statements on the record to correct any factual inaccuracies or omissions, and he availed himself of that opportunity. Finally, Petitioner's contention that the rating officials "rejected verified fact" and "injected new accusations" was false. The evidence reflects that the rating officials were responding to assertions made in Petitioner's rebuttal statements, providing details or support where he claimed such details or support was lacking. The Board believed that the rating officials demonstrated poor judgment in engaging in a point-counterpoint with Petitioner on the record within his FITREP, resulting in a 24-page document which spends more time airing grievances than assessing Petitioner's performance. This poor judgment, however, did not represent a pattern of obfuscation, as Petitioner described it.

The Board found that Petitioner mischaracterized the statements by the rating officials as false. Petitioner asserted that the TOS statement that his harassment allegations were referred to the appropriate official was false because it was not referred to the unit Equal Opportunity Representative (EOR). However, the evidence reflects that Petitioner's harassment allegation was investigated, resulting in the findings by Petitioner's commanding general on appeal that the SNCO had harassed him in enclosure (7). Further, the harassment that Petitioner described was not attributed to any of the types of bias which would necessarily be referred to the EOR. His assertion that the reference to his being relieved of his duties was false also was without merit, as this misunderstanding was addressed and clarified on the record; it was very clear from the text in the FITREP that Petitioner was removed from certain collateral duties and not formally relieved of his primary position. Again, the Board felt that the reporting officials demonstrated poor judgment by addressing every contention made by Petitioner's rebuttals on the record, but there was no evidence that these constituted false statements.

Although the Board did not find any error or injustice in Petitioner's FITREP based upon his contentions discussed above, it did find an injustice in the fact that certain rating officials relied upon the input of the SNCO who was found to have harassed Petitioner and who demonstrated a clear bias against him. The RO stated that he solicited input from, among others, this SNCO, in order to resolve inconsistencies and disagreements between the RS comments and the Petitioner's rebuttal. The evidence reflected that this SNCO had a clear and strong bias against the Petitioner. The Board did not agree with AO's comment that the "combined effort" of the [REDACTED] Defense Officer along with this SNCO diminished the Petitioner's argument that this input was tainted, and concluded that there was an injustice in permitting the input of this clearly biased individual to influence Petitioner's FITREP and career. Accordingly, the Board determined that the subject FITREP should be removed from Petitioner's record in the interest of justice.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
[REDACTED]

RECOMMENDATION:

In view of the above, the Board recommends that Petitioner's naval record be corrected by removing the FITREP for the reporting period 1 October 2018 and 14 May 2019, and inserting a continuity memorandum.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above titled matter.
5. The foregoing action of the Board is submitted for your review and action.

6/30/2022

[REDACTED]

ACTING ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS)
DECISION:

Board Recommendation Approved (Grant Relief)

Board Recommendation Disapproved (Deny Relief – I concur with the AO for the following reasons: _____

_____)

7/22/2022

[REDACTED]