



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: 6735-21
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 8 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.

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 1 June 2015 to 28 August 2015. You also request to remove your failure of selections for Fiscal Year (FY) 2018, FY 2019, and FY 2020 USMC Lieutenant Colonel (LtCol/O-5) Promotion Selection Boards. The Board considered your contention that the reporting senior (RS) did not comply with all three requirements for an exception to policy according to the Marine Corps Performance Evaluation System (PES) Manual. You also contend that the previous Board did not address your argument that there is no provision in PES Manual that allows for any deviation from meeting all three requirements to invoke the exception to policy. In addition, the Board did not address your argument that the plain meaning rule would prevent anyone else from invoking this exception to policy after the fact on behalf of a RS who did not meet all the requirements of the PES Manual in effect at the time your fitness report was prepared. You further contend that there is no qualifying language in the PES Manual that would allow third parties to assume the intent of the RS in invoking this exception to policy. You claim that the RS did not justify why this exception to policy was being invoked and did not even expressly state that he was invoking this exception to policy at all.

The Board, however, substantially concurred with the previous PERB and Board decision that your fitness report is valid and should be retained as filed. In this regard, the Board noted that according to the PES Manual (2015 ed.), “For periods of 89 days or less, RSs may submit an observed report if in their judgment, they possess sufficient observation and (1) the basis of the observation results from meaningful personal contact with the MRO; (2) the information provided to the Commandant of the Marine Corps is significant and provides a fair assessment of the MRO; and (3) justify in Section I why this exception to policy is being invoked.” The Board determined that the RS sufficiently satisfied the PES Manual requirements. The RS had discretionary authority to issue the fitness report and the RS’s use of alternate language does not invalidate the fitness report. The RS’s initial Section I statement clearly demonstrates his intent. Specifically, the RS acknowledged that the reporting period was for “a relatively short reporting period” and duly noted that “my assessment is based on meaningful, daily observations of the MRO performing in a key artillery billet.” The Board also determined that the RS comments were substantive, carry over to an addendum page, the comments are detailed, and demonstrated an in depth knowledge of your performance, thus sufficiently satisfying the requirement of the second element. The Board further determined that the RS statement “. . . MRO performing in a key artillery billet” demonstrates his intent to document your performance in a key billet and was sufficient justification to invoke the exception to policy.

Concerning your contention that there is no provision in PES Manual that allows for any deviation from meeting all three of these requirements to invoke this exception to policy. The Board determined that your contention is without merit, the Board determined that your RS met all three provisions of the PES Manual. In addition, there is no provision in the PES Manual that invalidates a fitness report if all three provisions are not identified using the same plain language used in the PES Manual. Moreover, the PERB and the Board are not acting as third parties, the RS's intent is clearly stated in Section I and by his submission of the fitness report. Based upon the fore going determinations, the Board found no basis to remove your failures of selection. Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

4/1/2022

[REDACTED]