



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: 7537-21
Docket No: 7538-21
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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 5 April 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 27 September 2021 decisions furnished by the Marine Corps Performance Evaluation Review Board (PERB) and the 24 August 2021 advisory opinions (AO) provided to the PERB by the Manpower Management Division Records & Performance Branch (MMRP-13). The AOs were provided to you on 27 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.

The Board carefully considered your request to remove your fitness reports for the reporting periods 1 June 2016 to 31 May 2017 and 1 June 2017 to 28 February 2018. The Board considered your contentions that your fitness report was marked adverse because you were not within Marine Corps height/weight standards and you were unable to obtain medical documentation for the cause of his weight gain until July 2020. You claim that a vitamin D deficiency and sleep apnea were factors that contributed to your weight gain. In addition, the side effects including fatigue, tiredness, low energy anxiety, daytime sleepiness, difficulty concentrating, irritability and headaches, and these symptoms persisted throughout the contested

reporting periods. You claim that your command would have approached your weight gain from a medical perspective if you had received an earlier diagnosis. You also claim that the temporary medical exemption process gives a commander the authority to allow a Marine to identify what is causing weight gain and to recover from it. As evidence, you furnished correspondence from two medical officers.

The Board, however, substantially concurred with the PERB decision that your fitness reports are valid and should be retained as filed. In this regard, the Board noted that the correspondence from the medical officers confirm your diagnosis of a vitamin D deficiency and sleep apnea, however, the medical officers also provided that your diagnosis does not waive enrollment from the Body Composition Program (BCP). The Board also noted that you were required to show cause due to substandard performance of duty for failing to conform to prescribed Marine Corps height and weight standards and for a lack of integrity demonstrated in the BCP. While the Board of Inquiry (BOI) recommended your retention in the Marine Corps, the Board noted that they unanimously found that a preponderance of the evidence proved the allegations against you. Based on this evidence, the Board determined that your fitness reports were processed according to the Marine Corps Performance Evaluation System Manual for not meeting Marine Corps height and weight standards. Further, in determining no error or injustice exists in your case, the Board considered that you did not dispute the facts in your fitness report. As a result, based on the totality of the evidence, the Board determined that your evidence was insufficient to warrant the removal of your fitness reports. 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,

4/27/2022

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Deputy Director

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