



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

█  
Docket No. 62-22  
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 11 August 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 and the additional information submitted via email on 1 March 2022 and 4 May 2022, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations and policies, as well as the 21 July 2022 Advisory Opinion (AO) provided by Headquarters Marine Corps (MMRP-50) and your response to the AO.

The Board determined your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully considered your request to direct that a Special Selection Board (SSB) be convened to consider you for promotion to Lieutenant Colonel. Specifically, you requested a SSB be convened to consider you for promotion by the Fiscal Year (FY) 2018 U.S. Marine Corps Lieutenant Colonel Promotion Selection Board (PSB). If not selected, you requested further consideration by the FY 2019, 2020, 2021, and 2022 U.S. Marine Corps Lieutenant Colonel PSBs. The Board considered the November 2021 modification to your fitness report for the reporting period 3 December 2004 to 13 April 2005. Specifically, the Board noted that, based on your efforts dating back to 2016, the Performance Evaluation Review Board (PERB) changed the report from "normal" to "academic" which resulted in removing the cumulative relative value that placed you in the bottom third. The Board further considered your contention that this most recent change to your record demonstrates that "material error of facts and material

unfairness” were present in your record and “deprived [you] of fair and impartial consideration” by the PSBs dating back to your first Lieutenant Colonel PSB in by the FY 2018 PSB. Additionally, the Board considered your contention that the removal of the bottom-third report would have a significant positive impact and noted your contention there is precedent for the Board to direct SSB relief in similar situations.

The Board also carefully considered the contentions addressed in your 1 March 2022 and 4 May 2022 submissions of additional information. Specifically, the Board considered your contention you did not have the benefit of an error-free record, as stated by the Board in its decision document for NR20190009823, because your record had errors in it until the PERB corrected the error to your 13 April 2005 fitness report in November 2021. You further contend the omission of the Bronze Star Medal, which you earned during a 2010 [REDACTED] deployment but did not receive until 2017, also negatively affected your competitiveness before the PSB. In response to the previous Board’s statement that you had “an additional three years” to improve your record, you explain that your service as a Marine Attaché in a joint environment produced fitness reports that did not generate any values to illustrate improvement, increased level of responsibility or your impacts at the strategic level of policy. You also explain the Marine Corps’ views on joint assignments, primarily attaché billets, and contend it was error for the FY 2018 precept to not include language from the SECNAVINST 1300.16 which supported joint duty assignments in the Defense Attaché Service (DAS) and that error impacted your competitiveness before the FY 2018 PSB. Additionally, in your May 2022 submission of additional information, you again addressed the following errors that “deprived [you] of a fair, accurate, and impartial consideration”: 1) Bronze Star Medal not being present in your permanent record for the FY 2018 and 2019 PSBs; 2) Five erroneous fitness reports in your permanent record prior to the FY 2018 PSB; and 3) Omission of SECNAVINST 1300.16 in the FY 2018 precepts.

The Board, however, substantially concurred with the MMRP-50 AO that, though the change was positive, the erroneous report that was corrected in November 2021 was not a significant factor in previous [REDACTED] PSBs. Per the guidance governing SSBs and reflected in the AO, the Board noted the requirement that in order to establish grounds for convening a SSB, the error must be material error and significant enough to change the perceived competitiveness of the Marine’s overall record in the eyes of any future PSB. The Board agreed that error existed in your record prior to the FY 2018 [REDACTED] PSB but, relying on the expertise of the career counselor at MMRP-50, determined the error was not material or significant enough to impact your competitiveness before the PSB. The Board carefully considered your rebuttal package, to include your statement and the supporting documents, submitted in response to the AO but determined the contentions regarding the AO, specifically that the AO erroneously and unjustly based its recommendation solely on numbers, were insufficient to overcome the presumption of regularity in the AO’s analysis. Specifically, as the Headquarters Marine Corps career counselors, MMRP-50 is positioned well to make recommendations regarding whether a change in one’s record is significant enough to change the perceived competitiveness of the overall record in the eyes of a future PSB. Noting that a change in the cumulative relative values of your [REDACTED] reports would not carry forward and create changes in the cumulative relative values from your service as a [REDACTED] or a [REDACTED], the Board determined the change, even the removal of a bottom-third report, would not be significant to a PSB which is focusing on your service in the higher ranks when considering you for promotion to [REDACTED]. For

example, although not dispositive, the Board noted you were selected for [REDACTED] with noted errors in your record, to include the error recently corrected by the PERB in November 2021, and concluded the AO's determination that the error was not significant enough to change your competitiveness was a reliable recommendation. The Board also considered your contentions regarding the Bronze Service Medal, the FY 2018 precepts, and your joint duty assignment with DAS but noted the scenarios created by those contentions would still be in the record if granted a SSB for FY 2018 because those are not errors or substantiated injustices. The Board concluded the change made to your report ending 13 April 2005 does not meet the threshold for positive correction significant enough to have altered the PSBs' decisions and denied your request to convene a SSB for the FY 2018, 2019, 2020, 2021, or 2022 U.S. Marine Corps [REDACTED] PSBs. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

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,

8/22/2022

[REDACTED]