



Marine, attempting to unduly influence the outcome of a preliminary inquiry regarding another CWO, unauthorized use of the official signature stamp of the Deputy Commander of [REDACTED], and misuse of authority to manipulate Marine administrators to report fraudulent unit diary entries at [REDACTED].

On 8 July 2010, you were charged with violating the Uniform Code of Military Justice (UCMJ). Following an Article 32 investigation, on 13 September 2010, the Staff Judge Advocate (SJA), [REDACTED] concurred with the findings of the investigation and recommended trial by General Court-Martial. Charges were eventually referred to a general court-martial.

On 1 December 2010, the [REDACTED] completed its investigation and substantiated claims against the Deputy Commander, [REDACTED], Assistant Chief of Staff/G-1 of [REDACTED] and the Command Sergeant Major of [REDACTED].

On 19 January 2011, your counsel submitted a formal request to Commander, [REDACTED] to dispose of the pending court-martial charges through administrative measures, stating specifically, "an adverse fitness report is appropriate." On 26 January 2011, Commander [REDACTED] dismissed the charges against you without prejudice and issued you a Page 11. Subsequently, you received an adverse fitness report covering the period 1 November 2010 to 27 January 2011; you submitted a statement in response to the adverse report.

You previously petitioned the Board to remove the fitness report and page 11 in question. You were advised in our letters, dated 29 November 2017, 14 May 2018, and 19 March 2021, that your applications were disapproved.

The Board considered your new request to remove the Page 11 counseling entry of 26 January 2011 and the adverse fitness report. You contend that the Page 11 and fitness report were reprisal against you for reporting the misconduct of senior leadership in the command to the Inspector General. You further argue that the Board's denial decision in November 2017 was erroneous as it was based on an alleged signed pre-trial agreement that does not exist. The Board noted that, other than your statement, you did not provide any new and material evidence for reconsideration.

The Board further noted that it did not specifically state in its decisions of 24 July 2014, 14 May 2018, or 19 March 2021 that it was denying your case based on the fact that you signed a pre-trial agreement. Instead, the Board documented that a third party investigator completed a CI that substantiated you committed misconduct and that the SJA, [REDACTED] reviewed the CI report and determined that there was evidence to prefer charges to a General Court-Martial. The Board further determined that your assigned defense counsel, sent a formal request to the Commander, [REDACTED] to dispose of the preferred courts-martial charges through administrative measures, stating specifically, "an adverse fitness report is appropriate." This fact is substantiated by the AO directed by the SJA to the Commandant of the Marine Corps, dated 20 May 2013, as well as the Commanding General, [REDACTED], who stated this directly in the contested report's Third Officer Sighter Addendum. Based on this evidence, the Board determined that the fitness report in question and page 11 were appropriately issued. The Board was not persuaded by your arguments that they were issued in reprisal. Consequently, the Board

concluded that there is insufficient evidence to show injustice or error warranting removal of your adverse fitness report and Page 11 entry. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

The Board thus determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC 1034. 10 USC 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy's follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with DoD policy you have the right to request review of the Secretary of the Navy's decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a de novo review and under 10 USC 1034(c) the Secretary of Defense cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Office of Legal Policy, 4000 Defense Pentagon, Washington, DC 20301-4000. Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and, a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the BCNR, therefore, please also include previously presented documentation that supports your statements.

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,

7/15/2022

