



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

██████████
Docket No. 1506-22
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 19 May 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 15 February 2022 decision by the Marine Corps Performance Evaluation Review Board (PERB), and the 25 October 2021 Advisory Opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30). The PERB decision and the AO were provided to you on 15 February 2022. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

The Board carefully considered your request to remove your Administrative Remarks (Page 11) 6105 counseling entry dated 23 June 2017 and your Fitness Report (Fitrep) for the reporting period 1 April 2017 to 31 August 2017. The Board considered your contention that the Marine Corps Training Information Management System (MCTIMS) does not reflect that you failed a physical fitness test (PFT), and that you were coerced into signing the Page 11 6105 counseling entry so that you could reenlist into the U.S. Marine Corps.

By signing the Page 11 6105, your commanding officer (CO) indicated that he believed it to be appropriate based on the facts and circumstances, and using a preponderance of the evidence standard. The Board thus determined that the issuing officer was well within his discretionary authority to issue the counseling entry, and that the entry met the counseling requirements in accordance with the Marine Corps Separations Manual. Specifically, the Board noted that the entry provided written notification concerning your deficiencies, specific recommendations for

corrective action indicating any assistance available, a comprehensive explanation of the consequences of failure to successfully take the recommended corrective action, and a reasonable opportunity to undertake the recommended corrective action. You were afforded the opportunity to rebut the counseling, but chose not to.

The Board noted that a Page 11 6105 counseling is given a presumption of regularity which requires you to provide sufficient evidence that the CO's decision was unjust or was materially in error. The Board determined that you provided insufficient evidence to rebut this presumption of regularity. With regards to your contention that you were coerced into signing the entry, you provided no evidence of this contention. The Board thus determined that the Page 11 6105 valid as written.

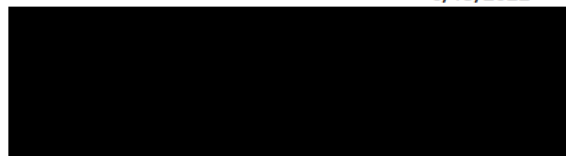
With regards to the removal of your Fitrep, the Board, however, substantially concurred with the AO and the PERB decision that, in accordance with the Performance Evaluation System (PES) Manual, the Fitrep is procedurally correct as written and filed. In this regard, the Board determined that although your PFT failure was unfortunate, you should have known that a scheduled PFT is ran for score. Although you assert you passed a subsequent PFT, PES guidance provides that a failed PFT renders a Fitrep adverse, to which you accepted and acknowledged. Despite your contention that the failed PFT was not documented in MCTIMS, the fact of the matter is that you still failed a PFT, and that omission of the fact does not invalidate the adverse nature of the Fitrep.

The Board thus concluded that your request is lacking in sufficient evidence of error or injustice warranting removal of the contested Page 11 counseling entry or fitness report from your OMPF.

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,

6/15/2022

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Deputy Director

Signed by: 