



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

█
Docket No: 1734-22

Ref: Signature Date



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 7 June 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 20 November 2020 decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), the 2 October 2020 advisory opinion (AO) provided to the PERB by the Manpower Management Division Records & Performance Branch (MMRP-13), and your response to the AO.

The Board carefully considered your request to remove your 30 March 2020 Administrative Remarks (page 11) entry, rebuttal statement, 26 June 2020 Report of Misconduct (ROM) and associated documents. You also request to remove your fitness report for the reporting period 2 February 2020 to 31 March 2020. The Board considered your contentions that the adverse fitness report was based on the page 11 entry, the page 11 entry was issued after you were no longer part of the command, and without affording you time to correct your deficiency. You also contend that page 11 entries are not required to be reported in a fitness report, yet the command elected to include it as the basis for the adverse fitness report. You further contend that the fitness report period should have ended on 19 March 2020 when you executed orders, instead of 31 March 2020. You argue that the extension of the reporting period leads one to perceive this as vindictive, at the onset of the adverse fitness report the reporting senior (RS) comments were favorable, and the RS changed his comments after you submitted a Request Mast application,

which also leads one to perceive this as vindictive. You claim that the statement from █ regarding emails and calls she received, demonstrates that there was a personal vendetta against you. You also claim that the fitness report was submitted 70 days after the reporting period instead of 60 days as required by the Marine Corps Performance Evaluation System (PES) Manual.

The Board noted that your Commanding Officer (CO) directed a Command Investigation (CI) into allegations that you sexually harassed and bullied a first lieutenant (1stLt). You were alleged to have used offensive and inappropriate comments that were meant as jokes, but had sexual undertones. The Investigating Officer (IO) found that the evidence did not prove a violation based on the strict definitions of bullying and sexual harassment, however, the IO did find that you created an unfavorable work environment and engaged in an inappropriate relationship with a junior officer. Based upon the CI, your CO determined that the available evidence led him to believe that an inappropriate relationship existed, amplified by poor decision making by a senior to junior officer, and that an unfavorable work environment was created.

The Board substantially concurred with the previous Board's determination that your contested page 11 entry is valid. In this regard, the Board noted that pursuant to the Marine Corps Individual Records Administration Manual (IRAM), you were issued a page 11 entry on 30 March 2020, counseling you for misconduct between July 2019 and January 2020 for developing an "unprofessional relationship with a █ characterized by excessive alcohol consumption, immature banter, and a complete breakdown of the senior-subordinate relationship." The Board determined that according to the IRAM the Commanding General (CG) was not obligated to afford you an opportunity to overcome your deficiencies prior to issuing your page 11 entry. The Board also determined that the CG relied upon sufficient evidence substantiated in the command investigation when determining that your page 11 entry was warranted.

Concerning your contention that you were no longer a member of the command when your page 11 entry was issued and at the end of the reporting period noted in your contested fitness report. First, the Board noted that your page 11 entry was signed by the CG, █ Marine Division. Next, the Board noted that you were issued temporarily additional duty (TAD) orders to Headquarters Battalion, █ Marine Division effective 19 March 2020. The Board determined that your TAD orders did not constitute a permanent transfer, as such, you remained subject to the authority of the █ Marines chain of command and CG, █ MarDiv. The Board found no evidence that your chain of command's actions were vindictive in nature and you provided none.

The Board also substantially concurred with the PERB decision that your fitness report is valid and should remain in your record as filed. In this regard, the Board noted that the deviation from the date of your temporary duty (TAD) orders had no impact on the 'Not Observed' nature of your fitness report. Regarding the adverse nature of your fitness report, according to the PES Manual, "Receipt of a counseling entry does not automatically constitute derogatory material on the next fitness report. However, the reporting officials must consider the substance of the entry to determine if, in their judgment, the entry is sufficiently derogatory in nature to render the fitness report adverse." In your case, the reporting chain exercised their discretionary authority and determined that your page 11 was adverse in nature. Your page 11 entry was issued on 30 March 2020, at which point your misconduct was considered fully-adjudicated via administrative

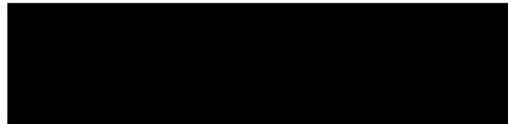
action and the reporting period properly ended on 31 March 2020. The Board also noted that the RS complied with the PES Manual by including justification to amplify the underlying basis of your fitness report's adversity in Section I, the reviewing officer concurred with the report's adversity, you were afforded an opportunity to provide rebuttal, you provided a rebuttal statement, and the Third Officer Sighter concurred with the report's adversity and its administrative correctness. Moreover, the Board determined that the late submission of your fitness report is not a sufficient basis to remove your fitness report.

Concerning the statement by █ the Board opined that communication between commanders, especially those involving officer misconduct are not uncommon. The Board found no evidence of malicious or vindictive conduct based upon this communication. Moreover, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. The Board found your evidence insufficient to overcome this presumption. 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,

6/23/2022



Executive Director

Signed by: █