



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

[REDACTED]
Docket No: 2399-22
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
[REDACTED] USMC

Ref: (a) 10 U.S.C. § 1552

Encl: (1) DD Form 149 w/enclosures
(2) Fitness Report for the reporting period 16 May 11 to 25 Jul 11
(3) BCNR Docket No. 4695-15 of 8 Sep 15
(4) HQMC memo 1610 MMRP-13/PERB of 12 May 15

1. Pursuant to the provisions of the reference, Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting his naval record be corrected by removing his fitness report enclosure (2).
2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 26 May 2022, and pursuant to its regulations, determined the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval records, and applicable statutes, regulations, and policies.
3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, found as follows:
 - a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.
 - b. Petitioner was issued enclosure (2), a fitness report for the reporting period 16 May 2011 to 25 July 2011. Petitioner contends the fitness report is in error and should be removed from his record. Specifically, he contends the fitness report should have been "not observed" because the Reporting Senior (RS) had less than 90 days of observation time, and, although exceptions are allowed, his situation did not warrant exception. Further, Petitioner contends he was a law student and not a certified judge advocate during the reporting period, and it was fundamentally unjust to compare him to other school-trained and fully-certified judge advocates.
 - c. The current petition is a request for reconsideration of enclosure (3), Docket No. 4695-15, Petitioner's request for relief that was denied on 8 September 2015. The previous Board determined the absence of the RS's justification for invoking an exception to policy was an unintentional omission on the part of the RS and does not invalidate the fitness report. Further, the Board determined the report reflected a "meaningful account" of Petitioner's efforts,

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accomplishments, and performance during the reporting period.

d. As part of the review of Docket No. 4695-15, the advisory opinion (AO) at enclosure (4) was provided by the Headquarters Marine Corps Performance Evaluation Review Board (PERB). The PERB determined Petitioner failed to meet the burden of proof necessary to establish an inaccuracy or injustice warranting the removal of the fitness report, but opined that the fitness report should have been designated in Item 3c (Type) as an academic/training report, i.e., "A" vice "N" since Petitioner was serving as a student judge advocate. The PERB determined the following corrections should be made: Change Section A, Item 3c (Type) to reflect "A" vice "N." However, corrective action was never taken.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an error warranting corrective action. In this regard, the Board noted the PERB's recommended corrective action from enclosure (4) had not been implemented and Petitioner's fitness report still reflects "N" vice "A." Relying on the AO at enclosure (4), the Board determined there was sufficient evidence of an error and injustice to warrant the recommended modification to Section A, Item 3c (Type). The Board, however, determined that with the recommended modification, there was insufficient evidence of an error or injustice warranting the removal of the contested fitness report.

RECOMMENDATION

In view of the above, the Board directs the following corrective action.

Petitioner's naval record be corrected by modifying enclosure (2), the fitness report for the reporting period 16 May 2011 to 25 July 2011, as follows: Change Section A, Item 3c (Type) to reflect "A" vice "N." That no further changes be made to Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of the reference, has been approved by the Board on behalf of the Secretary of the Navy.

6/20/2022

[REDACTED]