



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

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Docket No: 3078-22

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 12 July 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.

The Board carefully considered your request to remove your 7 June 2021 Administrative Remarks (page 11) 6105 and associated rebuttal statement. You also request to remove your fitness report for the reporting period 1 December 2020 to 7 June 2021. The Board considered your contentions regarding the new company commander and the multiple Inspector General (IG) complaints filed against her. You argue that you filed an IG complaint due to a hostile work environment and toxic command climate and you received two non-punitive letters of caution as reprimands against you. You also contend that several staff non-commissioned officers (SNCOs) received the page 11 entries with the same wording, which led you to conclude that issuing the page 11 entry was an arbitrary decision made without sufficient cause or evidence. You claim that before the commanding officer (CO) transferred, he decided it would be best for the Marines and the new commanders if the company leadership was removed.

The Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a page 11 entry counseling you for a loss of trust and confidence in your ability to lead, as evidenced by a negative command climate that was captured on the Marine Corps Ground Climate Assessment Survey, Defense Equal Opportunity

Climate Survey and four separate IG anonymous complaints. The Board noted that you acknowledged the page 11 entry and elected to submit a statement. The Board determined that your contested page 11 entry was issued and written according to the MARCORSEPMAN. Specifically, the entry provided written notification concerning your deficiencies, recommendations for corrective action, where to seek assistance, the consequences for failure to take corrective action, and it afforded you the opportunity to submit a rebuttal. Moreover, your CO signed the entries and determined that your misconduct was a matter forming an essential and permanent part of your military record, as it was his/her right to do.

The Board considered your concerns related to the company commander and noted that your reporting chain clearly indicated that your company commander was not wholly responsible for the command climate. The Board also noted that your reporting chain duly noted your deficiencies during the reporting period. Specifically, your reporting senior commented that you demonstrated an inability to effectively lead and assist the commander, your negligence and inaction towards cultivating cohesiveness led to a toxic command climate, and the motor transport company officers and enlisted personnel were the subjects of multiple substantiated and unsubstantiated allegations, alleged Prohibited Activities and Conduct violations, infighting, and internal distrust that equated to leadership fratricide. In addition, your reviewing officer commented that your counselings were issued for unprofessional behavior and inappropriate communication to female service members. The Board determined that your CO's decision to issue your 6105 entry was not arbitrary and it was based upon sufficient evidence. Moreover, the Board relies on a presumption of regularity to support the official actions of 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 also indicate in your application that you are the victim of reprisal. The Board also 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 █. 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.”

Concerning your request to remove your fitness report for the reporting period 1 December 2020 to 7 June 2021, the Board determined that you have not exhausted your administrative remedies. The Performance Evaluation Review Board (PERB) is the initial action agency for fitness report appeals, therefore, you must submit your request to the PERB according to the Marine Corps Performance Evaluation Appeals Manual.

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,

7/19/2022

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Deputy Director

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