



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

■
Docket No: 3184-22
Ref: Signature Date

Dear ■

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 21 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 18 March 2022 decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), and the 5 November 2021 advisory opinion (AO) provided to the PERB by the Manpower Management Division Records & Performance Branch (MMRP-13). The AO was provided to you on 18 March 2022, and you were given 30 days in which to submit a response to the AO. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

The Board carefully considered your request to remove or modify your fitness report for the reporting period 7 June 2019 to 30 June 2020. The Board considered your contentions that the reviewing officer (RO) comparative assessment mark was low due to an Inspector General (IG) complaint that you submitted, and issued in reprisal for remaining loyal to Marine Corps core values. You also content that since the submission of the IG complaint, you received the lowest comparative assessment mark that you have ever received, you did not have an opportunity to meet with the RO to discuss the low mark, and the mark and comments are not consistent with the awards you received, your billet accomplishments or reporting senior (RS) comments. You claim that you received two Letters of Appreciation, a Meritorious Mast and a Navy and Marine Corps Achievement Medal (NMCAM) during the reporting period. You also claim that the RO increased your subsequent comparative assessment marks from block 3 to block 6. You further

claim that during the time frame of the IG complaint, you had a 6105 page 11 entry removed utilizing the Performance Evaluation Review Board (PERB) process.

The Board, however, substantially concurred with the PERB decision that your fitness report is valid and should be retained as filed. In this regard, the Board noted that the Marine Corps Inspector General (IGMC) investigated your complaint and found that no violation of an order, rule, or regulation occurred. The Board found no evidence, and you provided none, that your comparative assessment mark was not issued based upon the RO's evaluation your performance as compared to all Marines (both past and present) of the grade whose professional abilities are known to him. The Board determined that the increased comparative assessment marks on subsequent fitness reports does not constitute a basis to remove your fitness report. The Board also determined that the Marine Corps Performance Evaluation System (PES) Manual does not provide a metric for commendatory material and noted that your fitness report was appropriately marked "Commendatory." As a result, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the fitness report. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You also indicated 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 Department of Defense (DoD) policy you have the right to request a 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,

7/5/2022



Executive Director

Signed by: 