



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: 3208-22
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 14 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 also considered the 8 April 2022 decision by the Marine Corps Performance Evaluation Review Board (PERB) (the PERB Decision) and the 1 February 2022 Advisory Opinion provided to PERB by the Manpower Management Division Records & Performance Branch (MMRP-30) (the AO). The PERB Decision and the AO were provided to you on 8 April 2022, and you were given 30 days in which to submit a response.

The Board carefully considered your request to remove the fitness report covering the period 16 November 2020 to 30 September 2021. The report is adverse because you received two Administrative Remarks Page 11 counseling entries during the reporting period. The first counseling was for failing the Physical Fitness Test (PFT) on 25 June 2021 and the second for making a false official statement, reporting your run time for the PFT as 29:20 in an attempt to deceive the monitors and receive a passing score.

You argue the report is erroneous and unjust because you are innocent of the allegations and performed the PFT in passing time. You further contend the PFT was administered incorrectly and the Preliminary Inquiry (PI) did not produce evidence that either offense occurred.

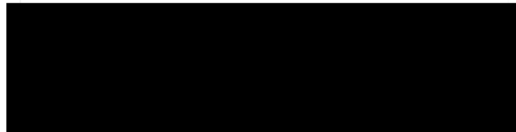
The Board noted that the PI stated the investigating officer (IO) "did not establish sufficient evidence to prove beyond a reasonable doubt that the violation occurred; however, the

preponderance of the evidence shows the violation is more likely than not to have occurred.” Specifically, the IO took notice that the Command Physical Training Representatives (CPTR) verified that you were the last to finish the three-mile run, that in general, personnel more often than not remember who finished first and last, and the completed PFT Worksheet lists two Marines who had slower recorded run times than you. Moreover, the Board found no evidence that the investigation was not conducted in accordance with regulations and found that your commanding officer (CO) had the authority to give more weight to the official statements by the Battalion Operations Chief and CPTR and issue the Page 11 entries. Therefore, based on the preponderance of the evidence, the Board did not find the CO’s decision to issue you the Page 11 entries to be unreasonable or an abuse of discretion. As a result, the Board concurred with the AO that the fitness report did not violate the Performance Evaluation System Manual, as the reporting chain accurately documented in Section I the underlying basis of the adversity, receipt of derogatory material. Consequently, the Board determined that the fitness report is administratively correct and insufficient evidence of error or injustice exists to warrant its removal from your record. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

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,

7/25/2022

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Executive Director

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