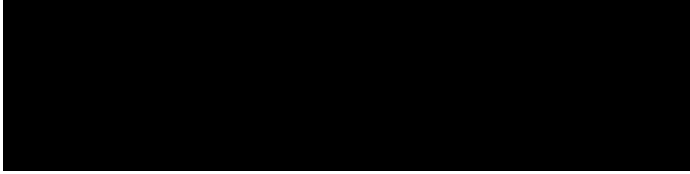




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

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Docket No. 3908-22
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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. 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, as well as the 9 May 2022 decision by the Marine Corps Performance Evaluation Review Board (PERB), and the 25 October 2021 Advisory Opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30). The PERB decision and the AO were provided to you on 9 May 2022. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

The Board carefully considered your request to remove your 21 April 2012 to 31 August 2012 Fitness Report (Fitrep). The Board considered your contention that the Reporting Senior (RS) referenced two non-punitive letters of caution (NPLOC) contrary to Performance Evaluation System (PES) Manual guidance.

The Board, however, substantially concurred with the AO and the PERB decision that the nature of the report's adversity stemmed from your relief for cause, as noted in the Section I comments, and the mentioning of the NPLOCS, although not in accordance with PES Manual guidance, does not make the Fitrep invalid. Despite this oversight, the Board further determined that the NPLOCS were not used as derogatory material, but referenced as a means to show that you were warned and counseled numerous times, to no avail. Furthermore, you acknowledged the adverse nature of the report, expounded on the details and circumstances of the NPLOCS in

your rebuttal statement, and the Third Officer Sighter adjudicated the factual differences of the contested Fitrep and determined that the RS was justified in relieving you for cause. The Board thus concluded that insufficient evidence of error or injustice exists to warrant removal of the fitness report from official military personnel file. 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,

8/2/2022

