

## **DEPARTMENT OF THE NAVY**

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

> Docket No. 3918-22 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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 28 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 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 was mailed to you on 9 May 2022, and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

The Board carefully considered your request to remove your 17 September 2011 to 1 November 2021 Fitness Report or to change it to "Not Observed." The Board considered your contention that the Reporting Senior (RS) comments contradict policy and that the reporting period was only 46 days.

The Board, however, substantially concurred with the AO and the PERB Decision that the report is valid as written and filed, in accordance with the applicable Performance Evaluation System (PES) Manual guidance. In this regard, the Board noted that in your request, you referenced updated PES Manual guidance in MCO 1610.7A. However, the Board also noted that the updated policy is not applied retroactively for minimum observation requirements. The Board

further noted that the RS adequately invoked exception to policy in compliance with the PES Manual guidance in effect at report processing and as such, he clearly explained in the Section I comments why he wrote an observed report on you. Furthermore, the Board also agreed with the AO conclusion that the RS was not specifically required to include your accomplishments within Section I. The Board thus concluded that your request to remove the report or modify to "Not Observed" is lacking in sufficient evidence of error or injustice. In making this finding, the Board took into consideration that you have twice promoted since the issuance of the report. 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.

