

## **DEPARTMENT OF THE NAVY**

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

> Docket No. 4214-22 Ref: Signature Date

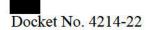


This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found 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 19 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 16 May 2022 decision furnished 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 & Performance Branch (MMRP-13). The AO was provided to you on 16 May 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.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully considered your request to remove the fitness report for the reporting period 1 July 2019 to 30 June 2020. The Board considered your contentions that the fitness report is administratively incorrect, because you were temporarily assigned to from 6 March 2020 to 28 May 2020, the assignment was your primary place of duty, and the 83-day gap is not accounted for as a period of non-availability. You claim that due to your service in the fitness report for the reporting administratively incorrect, because you were temporarily assigned to from 6 March 2020 to 28 May 2020, the assignment was your primary place of duty, and the 83-day gap is not accounted for as a period of non-availability. You claim that due to your service in the



senior (RS) or reviewing officer (RO) until approximately 15 June 2020. You assert that the substantial break in the observation period so close to your departure undoubtedly affected the reporting chains perception of your performance.

The Board, however, substantially concurred with the PERB decision that your fitness report is valid and should be retained as modified. In this regard, the Board noted that the PERB approved a correction to your record by adding the Directed Comment, "MRO Period of Non-Availability from 6 Mar 20 - 28 May 20 while providing temporary support to the in response to COVID-19." The Board determined that the omission of the period of non-availability was an administrative oversight and does not invalidate the nine months of observation during the reporting period or constitute grounds for removal of the report. The Board also determined that the PERB correction to your record sufficiently addressed the contested error. Therefore, since the balance of your fitness report remains valid, the Board agreed with the AO that to remove the report would constitute an excessive degree of redress. In making this finding, the Board found no evidence that your absence influenced your reporting chains evaluation of your performance. As a result, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice with the report as amended. 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.

