

DEPARTMENT OF THE NAVY

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

> Docket No. 4242-22 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 5 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 by the Marine Corps Performance Evaluation Review Board (PERB), and the 20 January 2022 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 16 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 1 January 2012 to 15 May 2012 Fitness Report. The Board considered your contentions that the comments do not match the markings or the commendatory nature of the report and that the report is not consistent with the policy. The Board further considered your contentions that the low Reporting Senior (RS) marks do not match the Reviewing Officer (RO) comparative assessment and that the RO comments did not substantially change from a previous report despite a significant improvement in the comparative assessment.

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 regards to your contention that the comments do not match the markings or the commendatory nature of the report and that the report is not consistent with the policy, the Board noted that low relative value does not constitute grounds for redress. The Board also noted that there is not PES manual scale to match RS markings. Further, the Board determined that the RO comparative assessment and that the respective RS portion of the performance evaluation are separate and unique and, regarding the RO comments, there no requirement that the RO comment on the increase in comparative assessment markings. The Board further noted that you omitted any endorsement from the RS of the contested report who is the only entity that can attest to the validity of the RS portion of the evaluation. Furthermore, while the RO expressed good intentions to add the qualifier "enthusiastically" to the Section K comments, the RO endorsement omitted any new facts that were unknown at report processing.

Finally, in regards to your contention that the fitness report reporting period was commendatory based on an award you received during the reporting period, the Board noted that there is no proscribed PES Manual evaluation metric associated with the receipt of a personal award. The Board thus concluded that insufficient evidence of error or injustice exists with this 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.

