



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

█
Docket No: 4290-22

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 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 9 May 2022 decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), the 15 December 2021 advisory opinion (AO) provided to the PERB by the Manpower Management Division Records & Performance Branch (MMRP-13), and your response to the AO.

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 June 2013 to 31 May 2014. The Board considered your contentions that the reporting senior (RS) ranked another officer above you causing irreparable damage to your potential for future advancement based upon your disagreement with the RS regarding personnel assignment and informing the reviewing officer (RO) of the disagreement. You claim that while discussing personnel assignments with your RS, you recommended that another officer be assigned with

you because you had concerns about that officer's mental stability. The RS disagreed with you, assigned the officer with him, and then questioned your mental stability and leadership ability. You assert that while in the ██████████, the other officer was arrested or detained by the local authorities for what you understood was "Drunk and Disorderly" conduct. The officer spent approximately one week incarcerated in a detention facility in the ██████████, returned to the ship, and received non-judicial punishment (NJP). You further state that the officer's NJP was not properly submitted, which resulted in the officer's subsequent attendance at Command and Staff College, and his selection to ██████████. You also assert that after the release of the promotion board results, the NJP discrepancy was identified and the officer retired.

The Board, however, substantially concurred with the PERB decision that your fitness report is valid and should be retained as filed. In this regard, the Board noted that your fitness report contained no errors or adverse comments and your petition did not suggest a specific error or injustice within the fitness report. The Board considered your assertions regarding the other officer, but found no evidence that the circumstances of that officer's misconduct had an impact on your reporting official's evaluation of your performance or your competitiveness for promotion. Moreover, the Board is not an investigative body and relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. The Board found your evidence insufficient to overcome this presumption. As a result, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice with the fitness report in question. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You also indicated in your application that you are the victim of reprisal. The Board, however, determined that there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC § 1034. 10 USC § 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy's follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with DoD policy you have the right to request review of the Secretary of the Navy's decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a de novo review and under 10 USC § 1034(c) the Secretary of Defense cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Office of Legal Policy, 4000 Defense Pentagon, Washington, DC 20301-4000. Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and, a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the BCNR, therefore, please also include previously presented documentation that supports your statements.

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,

7/29/2022

█
█

Deputy Director

Signed by: █