



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: 4397-22

Ref: Signature Date

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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 13 December 2021 decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), and the 6 July 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 13 December 2021, 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.

The Board carefully considered your request to remove or modify the fitness report for the reporting period 7 November 2017 to 31 March 2018. The Board considered your contention that the reporting senior (RS) observed the fitness report and completed Section I comments, however, the reviewing officer (RO) marked Section K of the fitness report insufficient observation. You also contend that the Section I comments read like a counseling for future performance, instead of a brief or reflection of your performance during the reporting period. Specifically, the comments "with future developments" and "continue building" reflect limitations and are in violation of the Marine Corps Performance Evaluation System (PES) Manual.

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 removing the statements: “. . . is encouraged to continue building his knowledge and leadership.” and “Through further development he is capable of contributing even more through his instrumental abilities and leadership.” In addition, the Board determined that the PES Manual provides RO’s the discretion to determine when it is appropriate to observe a fitness report. The Board found no evidence to support a finding that the RO abused his discretion by marking his portion of the report as unobserved. The Board also determined that the PERB correction to your record sufficiently addressed the contested errors and the balance of your fitness report is valid. Therefore, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice with the fitness report, as amended, and to mark the entire report as unobserved or to remove it from your record would constitute an excessive degree of redress. 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,

7/29/2022

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Deputy Director

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