



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

██████████
Docket No. 4417-22
Ref: Signature Date

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████████████████████

Dear ██████████

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 12 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 10 November 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 were mailed to you on 16 May 2022.

The Board determined that your personal appearance, with or without counsel, would 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.

You previously applied to this Board to have your Report of Substandard Performance and all related adverse material removed from your record including the fitness report covering the period of 1 June 2014 to 29 December 2014. Further, you requested a promotion to Colonel (Col/O-6). This Board denied your request to remove the Report of Substandard Performance and related adverse material on 29 March 2022. However, the Board did not consider your request to remove the fitness report since you had not yet exhausted your administrative remedies nor did the Board consider your request to be promoted to O-6 based on a lack of statutory authority.

The Board carefully considered your request to modify your 1 June 2014 to 29 December 2014 fitness report, remove adverse material from your record involving your Board of Inquiry (BOI) and Report of Substandard Performance, and to promote you to O-6. The Board considered your contentions that the fitness report does not accurately reflect your performance during the reporting period and that the RS comments are not specific and contain vague and ambiguous language. The Board further noted your contention that the RS did not provide a factual basis for adversity in the Performance, Leadership, and Ensuring Well-Being of Subordinate marks or comments. The Board also noted your assertion that the RO was committing integrity related misconduct during and after the report period and that he was subsequently investigated and relieved of duty approximately 5 months after your relief. Finally, the Board considered your arguments that Marine Corps leadership conspired against you to blame you for the toxic environment at the command and to deny you due process in your BOI.

Regarding the fitness report in question, the Board 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. The Board noted that the Reporting Senior conformed to the PES policy guidance in providing justification contrary to your contention that his comments were not specific, vague, and ambiguous. Regarding your contention that the RS did not provide a factual basis for adversity in his marks related to Performance, Leadership, and Ensuring Well-Being of Subordinates, the Board noted that the RS provided justification for each of the respective attribute markings, as required per policy. Further, the Board determined your contention that the RS and RO listed perceived results of your actions and not factual basis of alleged actions lacks any specification or validation. Finally, the Board noted your contention that the RO's integrity was questionable and that he was relieved of command a mere 5 months after you, lacks validation or specificity as to how the alleged integrity or relief of command actually invalidates the contested fitness report (as well as the Third Officer Sighter adjudication). The Board agreed with the AO that this argument essentially constitutes a deflection of blame and is unrelated to the report in question. As a result, the Board concluded that there is insufficient evidence of error or injustice warranting correction to the fitness report in question.

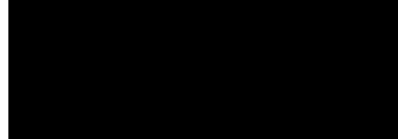
The Board also determined that the adverse material in your record related to your Report of Substandard Performance and BOI remains appropriate based on the evidence. In making this finding, the Board concurred with the rationale from its 29 March 2022 decision. Similarly, the Board affirmed its earlier determination that it lacked statutory authority to promote you to O-6. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

The Board noted you indicated on your application that "other mental health" was somehow related to your request. The Board, however, found no evidence a mental health disorder that influenced your performance. In fact, based on your statement from your previous application that you developed depression related burnout that was the "direct result of this performance evaluation and actions that occurred after receiving it," the Board determined that your mental health issues were not related to any performance issues that formed the basis for the fitness report or Report of Substandard Performance.

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,

8/3/2022

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Deputy Director

Signed by: 