



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

██████████
Docket No. 4950-22
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.

A three-member panel of the Board, sitting in executive session, considered your application on 30 August 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 29 June 2022 decision by the Marine Corps Performance Evaluation Review Board (PERB), and the 26 April 2022 Advisory Opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30). The PERB decision was provided to you on 29 June 2022. Although you were provided an opportunity to respond to the AO, you chose not to do so.

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.

The Board carefully considered your request to remove your 1 July 2019 to 9 August 2019 Fitness Report (Fitrep) as modified by the PERB. The Board considered your contention that previous Board action removed a nonjudicial punishment (NJP) and Administrative Remarks (page 11) 6105 counseling entry, but did not remove your Fitrep because you did not exhaust all administrative measures as required by the Performance Evaluation System (PES) Manual. Despite the Board's action to redacted language from Section I comments regarding your NJP, you claim that the corrective action is insufficient because the Fitrep will still contain material

errors, the Fitrep is factually incorrect but is of minimal value, the Fitrep was based solely on the NJP, and it is fundamentally unfair to keep the Fitrep in your Official Military Personnel File (OMPF) after the NJP was removed. Additionally, the Board considered your assertion that not removing the Fitrep would be erroneous and misleading given you were not the subject of any disciplinary action or derogatory material during the reporting period.

The Board noted PERB's action directing the Fitrep be modified by removing the marked associated with disciplinary action noted in Section A, Item 6.c., and removing "/6c" from Section I comments referencing disciplinary action. In light of the PERB's action, the Board considered your request to remove the contested Fitrep based on your contentions above.

The Board, however, substantially concurred with the AO and the PERB decision and determined that your current record is a matter of fact and sufficient relief was granted. Although you contend the action had yet to be taken upon submission of this application, the Board noted that the contested Fitrep has in fact been modified. The Board determined that absent the redacted language, and PERB's most recent modification, the contested Fitrep remains adverse due to your own actions of driving under the influence of alcohol. The Board further determined that you failed to provide sufficient evidence that would render the remaining portions of the contested Fitrep invalid. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the contested Fitrep from your OMPF. 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,

9/25/2022

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Executive Director

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