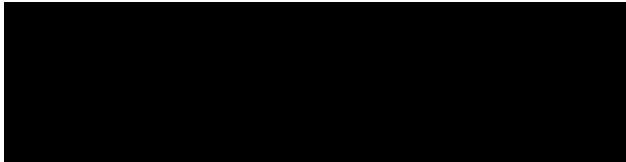




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

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Docket No: 5396-22
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.

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 16 July 2022 decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), and the 18 April 2022 advisory opinion (AO) provided to the PERB by the Manpower Management Division Records & Performance Branch (MMRP-13). The AO was provided to you on 16 July 2022, and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

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 your fitness report for the reporting period 6 August 2019 to 23 March 2020. If approved, you also request to remove your fiscal year (FY) 2023 failure of selection (FOS). The Board considered your contention that the fitness report was rendered adverse due to a subjective evaluation by the reporting senior (RS). You also contend that throughout the reporting period, you did not receive adverse paperwork or a documented counseling. You claim that during informal counselings with the RS, you regularly

discussed points for sustainment and improvement, there were no discussions regarding a lack of potential or questions about your professional character. You assert that there was an assault amphibious vehicle (AAV) incident on 30 July 2020 that subsequently led to the relief of your RS due to loss of trust and confidence in his ability to command and your RS was required to show cause for retention. In light of these measures, you also assert that your RS's actions prior to the 30 July 2020 incident warrant review. In addition, you provide that while your performance during the reporting period was far from perfect, your company performed well and accomplished the necessary and appropriate tasks.

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 you were relieved for cause because you struggled to provide leadership to your company, for being unable to work effectively with the battalion staff, and your inability to correct your deficiencies despite six months of counseling. The Board also noted that you acknowledged the adverse nature of the fitness report and that you elected to make a statement; a statement in which you wholly accepted responsibility for your deficiencies. The Board found no evidence that your performance and conduct rated higher marks than you received and you provided none. The Board acknowledged the AAV incident you noted, however, the Board determined that there is no nexus between your RS' relief, his actions prior to the AAV incident, and the basis for your adverse fitness report. As a result, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the fitness report in question. Based upon the foregoing, the Board also determined that there is no basis for the removal of your FOS. 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,

9/11/2022

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