



these unethical activities the RS marginalized you and, in retaliation, submitted an inaccurate negative review of your performance for your fitness report.

However, the Board concurred with the AO that the fitness report is presumed administratively correct, procedurally complete, and valid. The Board noted that the RS gave you 2 "F" attribute markings and 11 "E" attribute markings; a highly favorable evaluation. The Board also noted that the petition fails to specify how the report violated the PES Manual or the Military Whistleblower Protection Act. The Board concurred with the AO that the petition does not include any evidence to show that the RS, or his staff, attempted to include you in any illegal activities and that there was no evidence to show RO malfeasance or irregularity.

Moreover, the Board noted that you did not provide any evidence that you submitted an Inspector General complaint in regards to your whistleblower contention. The Board thus determined 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.

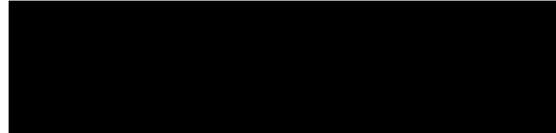
Consequently, the Board determined that the contested report did not contain material error, substantive inaccuracy, or injustice and shall remain in your official military personnel file as written. Based on this determination, the Board also concluded that removal of your failure to select for promotion to lieutenant colonel is not warranted. 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,

10/2/2022



Executive Director

Signed by:

