



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: 5401-22

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 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 19 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 1 June 2018 to 6 January 2019. The Board considered your contention that, contrary to the Marine Corps Performance Evaluation System (PES) Manual, the change of duty (CD) reporting occasion was used to highlight a page 11 entry. You also contend that a CD report is appropriate when there is a significant change of primary duty under the same reporting senior

(RS). You assert that when compared to your previous fitness report, the duty assignment remained the same and the billet description was not substantially different than the contested fitness report. You also assert that the page 11 entry was not relevant to your performance, you had the opportunity to submit a statement but did not, and although the command investigation substantiated the allegation against you, no charges were filed by the local police because the allegations were factually weak and not supported by any evidence or witnesses. You claim that you did not have all of the necessary documents, were not aware of the totality of the evidence used to issue the page 11 entry, and you were not able to fully articulate a valid rebuttal without it. As evidence, you furnished the police report.

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 issued a page 11 entry pursuant to the Marine Corps Individual Records Administration Manual (IRAM) for disorderly conduct in an off base residential neighborhood. You acknowledged the entry and elected to make a statement. In your statement, you acknowledged “a misstep” on your part, accepted responsibility, and apologized. The Board determined that your page 11 entry was written and issued according to the IRAM and your misconduct was properly documented in the fitness report according to PES Manual guidance. The Board also noted that the documented misconduct occurred during the reporting period, and thus determined that your misconduct was relevant to your reporting officials when evaluating your performance and conduct. The Board also determined that the CD reporting occasion was not in error based on the change to your primary duties from the Southeast Asia Intelligence Officer to Intelligence Officer on your subsequent fitness report. Finally, the Board further determined that the civilian authorities’ decision not to file formal charges against you does not invalidate your page 11 entry, nor is it a basis to remove your contested fitness report, since your misconduct was substantiated, the derogatory material was reviewed by the Deputy Commandant, Manpower and Reserve Affairs, and it was determined that the derogatory material would be included in your record. Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the fitness report. 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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Executive Director
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