



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: 5404-22
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.

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), the 13 May 2022 advisory opinion (AO) provided to the PERB by the Manpower Management Division Records & Performance Branch (MMRP-13), and your response to the AO.

The Board carefully considered your request to remove your fitness report for the reporting period 1 June 2018 to 31 May 2019. You also request to remove the 26 September 2018 Administrative Remarks (page 11) entry. The Board considered your contentions that the fitness report was issued as a form of punishment based upon your page 11 entry. You also claim that the fitness report contains remarks about high performance that contradict the adverse Section I comments and the fitness report comments inappropriately revealed personal medical treatment information. You claim that two different Commanding Generals (CGs) stated that your fitness report was levied as "punishment" by your commanding officer (CO), who also served as the reviewing officer (RO). In your response to the AO, you assert that the CG, █ Command's (CG, █) comment clearly indicates that he did not agree with your CO's use of the page 11 entry and fitness report as forms of punishment.

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 pursuant to the Marine Corps Individual Records Administration Manual (IRAM), you were issued a page 11 entry counseling you for an alcohol related incident in violation of the Marine Corps Forces █ and █ General Order Number 1. You acknowledged the entry and elected to submit a statement. In your statement, you acknowledged your deficiency and elected to attend the Marine Corps Substance Abuse Rehabilitation Program. 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. Moreover, 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.

The Board also determined that your page 11 entry and fitness report were not issued as punishment and your reference to the CG, █'s statement is misguided. In this regard, the Board noted the 8 November 2018 CG, █ endorsement to your Report of Misconduct. The CG, █ noted that he "did not concur with the conclusion of the Commanding General, █ Command, that a page 11 counsel and adverse fitness report are "sufficient punishment for this misconduct"." He did not concur because "neither of these actions are intended as disciplinary tools." He then noted that he concurred that "a page 11 counseling and ensuing adverse fitness report adequately address and capture . . . poor conduct, substandard performance, and bad judgment." The Board further determined that the CG, █'s statement was to clarify that your page 11 entry and fitness report were issued to capture your misconduct, instead of punishment as mischaracterized by the CG, █ Command.

Concerning the comments related to your completion of substance abuse program, the Board noted that your completion of the substance abuse program was first mentioned in your rebuttal statement and was thus a matter of record. Therefore, any subsequent mention of your substance abuse treatment was not a violation policy. The Board also concurred with the AO that the situation leading to your screening and subsequent intensive treatment were precipitated by your misconduct. Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the fitness report or page 11 entry. 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

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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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