



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: 5409-22
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 16 July 2022 decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), and the 25 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 11 June 2021 to 7 December 2021. The Board considered your contention that the fitness report reflects uncharacteristically low scores and language that suggest adversity, neither of which represents your overall performance during the reporting period. You also contend that the poor scores were due to a single incident in the maintenance department and the reviewing officer (RO) ranked you with his bottom group of O-4s, despite the overall success of the

maintenance department. You assert that you were relieved before the command investigation; your relief was not based on your failure as a leader, but to identify ‘if’ you failed as a leader; you did not receive a written counseling; and if there was cause for relief you should have been counseled and issued an adverse fitness report. You claim that the Section I comments include “velvet daggers” and any mention of your performance as the maintenance officer was removed from your award after the incident. In addition, you provide that while assigned as the Maintenance Officer, a Marine failed to follow the proper clearing procedures when testing a 20mm cannon and negligently discharged the cannon. The bullet passed through a nearby vehicle and into the forest with no injuries to any personnel. Subsequent to the event, you and the senior enlisted member were relieved of your positions.

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 your fitness report does not contain any comments or reference to you being relieved for cause or removed from your assigned billet as Maintenance Officer. The Board also noted that the command investigation into the facts and circumstance surrounding the aviation ordnance negligent discharge did not include any recommendations for administrative or punitive action against you. The Board found your evidence insufficient to support your claim that you were relieved for cause. The Board also determined that your commanding officer (CO) was not required to postpone your transfer. The Board concurred with the AO, that the CO’s decision to permit your transfer prior to completion of the command investigation likely signaled that the command did not perceive that you were culpable. Although you were not deem culpable for the negligent discharge, the Board determined a significant failure to adhere to established safety protocols by a member of your department was appropriate for your reporting chain’s consideration during their evaluation of your performance and conduct. The Board further determined that the Marine Corps Performance Evaluation System Manual grants RS’s discretionary authority when evaluating performance and conduct and found your evidence insufficient to warrant removal of your 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. 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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