



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

█  
Docket No. 5413-22  
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 by the Marine Corps Performance Evaluation Review Board (PERB), and the 4 March 2022 Advisory Opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30). The PERB decision and the AO was mailed to you on 16 July 2022. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would 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 1 June 2020 to 15 March 2021 Fitness Report (FITREP). The Board considered your contentions that the adverse nature of the FITREP was the result of a personality conflict between you and your Reviewing Officer (RO) caused by a hostile workplace environment that he created and that the unit or command never provided any forms of counseling or corrective actions prior to your removal as the Operations Officer. The Board also considered your assertions that the hostile workplace was not a "one-

off” misinterpretation as well as your claim that that up until you were removed as the Operations Officer you had not shown a trend of adverse behavior.

The Board, however, substantially concurred with the AO and the PERB Decision that the report is valid as written and filed, in accordance with the applicable Performance Evaluation System (PES) Manual guidance. In regards to your contention that the adverse report was the result of a personality conflict with your RO, the Board noted that in accordance with paragraph 3.b(6) of Chapter 10 of MCO 1610.7A, “A personality conflict between the applicant and a reporting official does not automatically constitute grounds for relief.” Further, the Board noted that your assertion was further weakened by the inconclusive and non-supportive input from the former direct supervisor of the RO who evaluated the RO with high regards. The Board also noted your assertion that the hostile workplace was not a “one-off,” however, the Board noted by your own admittance, the command climate survey did not identify a toxic command climate.

Regarding your contention that you were never formally or informally counseled prior to the receipt of this report, the Board determined that relief is not typically granted on this basis since counsel takes many forms. They further noted that it is near impossible to provide a preponderance of evidence to validate that counsel never occurred. Furthermore, the Board noted that you were relieved for cause based upon performance and that the RS is required to provide the factual basis for the assessment in the justification block of the appropriate attribute and state in Section I that the MRO was relieved for cause, which he did.

Finally, the Board also noted your contention that there was no previous trend of adverse behavior within your record, however, that does not preclude the documentation of subsequent behavior within the contested FITREP. The Board thus concluded that there is insufficient evidence of error or injustice warrant removing the report from your record. 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,

9/20/2022

