



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

██████████
Docket No: 5440-22
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 29 September 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) (the PERB Decision), and the 6 May 2022 Advisory Opinion provided to PERB by the Manpower Management Division Records & Performance Branch (MMRP-30) (AO). The PERB Decision and the AO were provided to you on 16 July 2022. Although you were given 30 days in which to submit a response, 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.

On 10 February 2020, ██████████ police cited you for driving 124 miles-per-hour (mph) in a 55 mph zone. On 28 April 2021, you pled to driving 74 mph in a 55 mph zone. On 5 May 2021, you received a paragraph 3005 counseling for violating Article 113, operating a motor vehicle in a reckless manner by traveling at an excessive speed. You subsequently received a Report of Misconduct, on 12 May 2021, for the same incident. As a result, for the fitness report covering the period 1 February 2021 to 31 May 2021, you received an adverse 'A' marking for section G.3 'Judgment' and an Unsatisfactory marking for the reviewing officer (RO) comparative assessment in section K.3.

The Board carefully considered your request to remove the adverse fitness report. You argue that the report is erroneous because the report's adversity was based on an incident that occurred in the previous reporting period. You further contend that the report should have been marked as not-observed as you were on temporary additional duty (TAD) to support Weapons and Tactics Instructors (WTI) course during the reporting period.

The Board, however, substantially concurred with the PERB decision that your fitness report is valid and should be retained as filed. The Board also concurred with the AO that your TAD in support of WTI did not constitute a formal period of non-availability for purposes of minimum observation time. The Board further concurred that the underlying basis for the adversity of the report was valid as the Performance Evaluation System (PES) Manual allows for incidents in a prior reporting period to be documented in the reporting period in which the adverse incident is resolved. The Board noted that you received derogatory material, the paragraph 3005 counseling, during the reporting period for which the RO was authorized to assess an 'Unsatisfactory' marking. The Board further noted that you did not submit a rebuttal statement to the report and the Third Officer Sighter found no inconsistencies or disagreements regarding the report. As a result, the Board determined that insufficient evidence of error or injustice exists with the fitness report to warrant its removal 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,

10/20/2022

A large black rectangular redaction box covering the signature of the Executive Director.

Executive Director

A black rectangular redaction box covering the contact information of the Executive Director.