



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

■  
Docket No. 5829-22  
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 20 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 1 August 2022 decision by the Marine Corps Performance Evaluation Review Board (PERB), and the 23 May 2022 advisory opinion (AO) furnished by the Manpower Management Division Records and Performance Branch (MMRP-30). The PERB decision and AO were provided to you on 1 August 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 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 fitness report for the reporting period 6 June 2020 to 30 April 2021. If approved and if you fail selection during the Fiscal Year 2024 Marine Corps ■ promotion selection board, you request to remove your failure of selection. The Board considered your contention that although you displayed a moment of poor judgment, you did not violate civil laws, nor were you charged with any Uniform Code of Military Justice (UCMJ) offenses. You also contend that your relief for loss of trust and confidence was unjust because your chain of command continued to have

confidence in your ability to lead. You claim that you retained all flight leadership qualifications, immediately transferred to an adjacent unit for flight duty, executed flight related ground jobs, completed an additional instructor qualification, led an S-1 shop through unit transition, and assumed the billet of executive officer.

The Board, however, substantially concurred with the PERB decision that your fitness report is valid and should be retained as modified. In this regard, the Board noted that the PERB approved a correction to your record by removing the mark for derogatory material; the Section I directed comment; and the reviewing officer comment related to your page 11 entry. The Board also noted that you elected not to make a statement and determined that your election indicated that you understood the basis for your report's adversity. The Board determined that your admitted lapse in judgement is a matter of record that resulted in your chain of command's loss of trust and confidence. The Board also determined that your subsequent leadership accomplishments do not invalidate your fitness report. The Board found the corrections by the PERB to be sufficient and determined that the balance of the fitness report is valid as written. The Board thus concluded that your request lacked sufficient evidence of a 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.

Concerning your request to remove your potential failure of selection, the Board noted that the [REDACTED] promotion selection board convened on 9 August 2022 and the selection list has not yet been approved. As such, the Board determined that your request is premature, and thus not ripe for consideration.

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

[REDACTED]

Executive Director

Signed by [REDACTED]