



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

█
Docket No: 5840-22
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 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 furnished by the Marine Corps Performance Evaluation Review Board (PERB), and the 15 June 2022 advisory opinion (AO) provided to the PERB by the Manpower Management Division Records & Performance Branch (MMRP-30). The AO was 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.

The Board carefully considered your request to remove your fitness report for the reporting period 1 August 2016 to 31 May 2017 or, in the alternative, modify it by changing the reporting senior (RS) portion of your fitness report to be not observed. If approved, you also request to remove your failures of selection (FOSS). The Board considered your contention that according to the Marine Corps Performance Evaluation System (PES) Manual, the RS is directly responsible for the Marine's daily tasking and supervision. You also contend that the RS was bias because you were on limited duty and could not complete the fitness tests during the reporting period, and the RS incorrectly reported your injury in Section I. You claim that your RS was a fellow instructor, he did not provide any tasking while you fulfilled your duties, and he

reported to you. You also claim that your inability to complete the fitness test negatively affected your evaluation, specifically, the attribute for 'Setting the Example'. You assert that your other fitness reports were observed by the Associate Chairman of the Department or the Marine Detachment Chief of Staff.

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 found no evidence identifying the individual or agency that provided your daily tasking and you provided none. The Board noted that your RS was a lieutenant colonel with an established fitness report profile for Marines of your grade, the reviewing officer observed your fitness report and concurred with the RS's evaluation of your performance. Moreover, the Board found no evidence to indicate that your RS was not appropriately situated to evaluate your performance, nor did you provide any evidence that your performance and conduct warranted higher marks than you received.

Concerning your contention of bias due to your limited duty status, the Board found no evidence that your RS was biased on your inability to complete the required annual fitness test and you provided none. The Board noted that you were excused from taking the fitness test for medical reasons. The Board also noted that your fitness report accurately indicated that you were not medically required to complete the fitness test. The Board determined that your RS's statement that you were excused due to a broken foot was required and did not constitute a violation of the PES Manual. As a result, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal or modification of the fitness report. Based upon the foregoing, the Board also determined that there is no basis for the removal of your FOSs. 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,

9/27/2022

█

Executive Director

Signed by: █