



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: 5862-22
Docket No: 5864-22
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 25 October 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 8 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 did not 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 modify your fitness reports for the reporting periods 16 May 2009 to 31 October 2009 and 1 November 2009 to 27 May 2010 by increasing numerous attribute marks. You also request to remove your fiscal year (FY) 2023 failure of selection for promotion to Lieutenant Colonel (LtCol/O-5). The Board considered your

contention that the reporting senior (RS) stated that your performance during the reporting periods was high and your fitness reports should reflect that level of performance. You claim that your RS confirmed that the attribute marks were inadvertently marked low and did not accurately capture your level of performance. As evidence, you furnished correspondence from your former RS requesting modifications to your attribute marks.

The Board, however, substantially concurred with the PERB decisions that your fitness reports are valid and should be retained as filed. In this regard, the Board noted that the Marine Corps Performance Evaluation System (PES) Manual, does not provide a mechanism to reset a RS's profile. The Board also noted the correspondence from your RS's, however, his correspondence did not include substantive justification for the increased marks, nor did he provide any new facts that were not known to him when your fitness reports were originally processed. The Board determined that your evidence was insufficient to warrant the substantive modifications to your fitness reports. The Board also determined that the requested modifications would negatively affect and decrease the relative values of the other Marines in the RS's profile. As a result, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting modification of the fitness reports. Based upon the foregoing, the Board found no grounds to remove your failure of selection. 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,

11/6/2022

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