



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

█  
Docket No: 5866-22  
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 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 23 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.

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 report for the reporting period 14 June 2019 to 11 May 2020 by changing the reporting senior (RS) portion of the report to be not observed. 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 your reporting senior (RS) stated that the fitness report would place you in the middle third of his profile. However, once processed, you felt as though the RS misled you because the relative

value placed you in the bottom third of the RS profile. You also contend that the RS does not have a marking gradient and has not effectively manage his major profile, which resulted in inaccurate reporting. You claim that your RS explained that he has a narrow grading scale with a range of only .28 between the high and low. You argue that the RS's justification for placing you in the bottom third of his profile is illogical and implies that he did not have enough observation of you during an almost year-long reporting period. As evidence, you furnished an email exchange between you and the RS.

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 noted your email, in which you indicated an expectation that your fitness report would at least fall within the middle third of his profile, but found no evidence that the RS promised a middle third report and you provided none. The Board also noted that your RS's comment that he has a rather narrow grade scale for O-4s of only .28 difference between low and high and that he believed that he was as objective as he could be given the observation time, performance and tasks/position assigned to you. Contrary to your claim, the Board determined that your RS did not imply that he did not have enough observation of your performance, his comments indicate that he considered several factor that included the period of observation, your performance, and assigned duties. The Board also determined that a low relative value is not a basis to render the RS's evaluation of your performance invalid. As a result, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting modification of the fitness report. 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,

11/7/2022

