



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

██████████  
Docket No. 5869-22  
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 27 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), the 3 May 2022 Advisory Opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30), and your 8 August 2022 response to the AO.

The Board carefully considered your request to remove your fitness report for the reporting period 1 June 2018 to 3 April 2019, as well as your 5 August 2019 Report of Substandard Performance and all adverse related material. The Board considered your contention that the Investigating Officer (IO) failed to collect all available evidence and instead “cherry picked” a select few individuals to provide statements which you claim created an unreliable investigation. You also contend that the issue was not with you but with your First Sergeant and the uptick in operational tempo, which included training, exercises, and inspections leading up to deployment. You further contend that since your First Sergeant had his nonjudicial punishment (NJP) removed from his record, and that your adverse material should also be removed. You argue that since the Command Investigation (CI), relief and subsequent adverse fitness report were intertwined with the First Sergeant’s perceived adverse actions, then corollary consideration for similar redress should be considered for you. Finally the Board considered your claim that your performance and conduct in previous commands has been exceptional.

The Board, however, substantially concurred with the AO and the PERB decision that the contested report is valid as written and filed, in accordance with the applicable Performance Evaluation System (PES) Manual guidance. In this regard, the Board noted that on 11 January 2019, your command initiated a CI into violations of the Prohibited Activities and Conduct Order by the [REDACTED] Company First Sergeant. The CI substantiated the violations of the PAC order resulting in his relief as your Company First Sergeant. As a result, the Battalion Command requested further investigation into the Command Climate of [REDACTED] Company. On 27 March 2019, the IO recommended that you be relieved of command due to poor command climate. The IO found that your focus on operational success blinded your ability to understand your own command climate and that over the course of 17 months you lost the trust and confidence of the majority of your subordinate leaders. Your Commanding Officer (CO) concurred with the IO's findings of fact, opinions, and recommendations and because he lost trust and confidence in your ability to lead your unit you were relieved of command.

Regarding your contention that the IO "cherry picked" a select few individuals to provide statements creating an unreliable investigation, the Board noted that the Convening Authority (CA) reviewed the investigation to ensure it met all requirements according to regulations, and the CA endorsed the investigation and found it to be legally sufficient and proper. The Board found no evidence to suggest that the investigation was flawed or that the IO failed to conduct the investigation according to regulations.

In review of your petition, the Board noted that the majority of your contentions were also provided in your rebuttal statements to the contested fitness report. The Board also noted that your grievances were carefully considered and adjudicated by the Third Officer Sighter of the fitness report, and the evidence in your petition failed to demonstrate the existence of probable material error or injustice in the issuance your fitness report. Additionally, in your response to the Report of Substandard Performance, you admit that your First Sergeant "committed misconduct" during the time you served as Company Commander. The Commanding General, [REDACTED] Marine Division determined that your primary failure was "allowing [your] First Sergeant's poor leadership and conduct to infect the company." Although you assert your performance and conduct has been exceptional, the Board determined your actions prior to your tenure as Lima Company Commander does not excuse the actions that resulted in your relief and inclusion of adverse material in your official military personnel file.

Regarding your assertion that your First Sergeant's NJP was removed from his record, and therefore your adverse material should also be removed, the Board noted that the First Sergeant's NJP was set aside by a subsequent CO, not in your chain of command, and based primarily on procedural errors. Moreover, the Board considers each case on its merits and has no purview regarding the actions or decisions by the First Sergeant's CO who set aside the NJP. The Board further determined that the First Sergeant's relief does not invalidate your CO's finding that you failed to recognize your First Sergeant's poor leadership and that you failed to take appropriate action to improve the command climate. Moreover, the NJP set-aside does not invalidate your Report of Substandard Performance, adverse fitness report, or relief for cause. Although the CI found there was an uptick in operational tempo, the Board determined that your evidence did not disprove that there was strong evidence of a poor command climate fostered by you.

In view of the foregoing determinations, the Board found no basis to remove your fitness report or Report of Substandard Performance and related averse material. The Board thus concluded that corrective action is not warranted.

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,

10/28/2022

