



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. 5870-22
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 13 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 6 June 2022 Advisory Opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30). The PERB decision and the AO was mailed 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 remove your fitness report for the reporting period 1 November 2019 to 23 January 2020. The Board considered your contention that there are multiple violations of the Performance Evaluation System (PES) Manual by the reporting officials in the report.

The Board, however, substantially concurred with the AO and the PERB Decision that the report is valid as written and filed, in accordance with the applicable Performance Evaluation System

(PES) Manual guidance and that your failure to report allegations to your chain of command, caused them to lose trust and confidence in your ability to lead a platoon. The Board noted that a Command Investigation was conducted into allegations that a member of your company was displaying inappropriate and harassing actions on several occasions. The Investigating Officer (IO) opined that your company failed to ensure proper leadership and had developed a harmful culture towards the junior Marines. The Board also noted that the CI was endorsed by the Convening Authority and determined to have been conducted according to regulations.

Regarding your contention that there are multiple violations of the PES Manual, the Board reviewed the comprehensive addendum that you provided, as well as the information and facts that were known at report processing. The Board noted that the majority of grievances articulated in your request were also provided in your rebuttal statement to the contested report at report processing and no new evidence was provided in support of your claim. The Board also noted that your command determined you were aware of the misconduct and you were negligent in the performance of your duties by not reporting the misconduct or protecting the victims, which resulted in a lack of trust and confidence in your abilities to lead the platoon.

The Board also considered your claim that the subject of the investigation (Corporal) was not court-martialed due to lack of confidence from the unit, however, the Board determined that even if the Corporal was not court-martialed, it would not invalidate the contested report. Finally, the Board also considered your claim that you never received an initial counseling, the Board determined that although the PES Manual encourages the reporting senior to counsel the Marine Reported On throughout the reporting period, it is not required. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the fitness report in question. 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,

10/7/2022

