



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: 6107-22

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 furnished by the Marine Corps Performance Evaluation Review Board (PERB), the 27 May 2022 advisory opinion (AO) provided to the PERB by the Manpower Management Division Records & Performance Branch (MMRP-30), and your response to the AO.

The Board carefully considered your request to remove or modify your fitness report for the reporting period 11 June 2020 to 25 June 2021 by changing the fitness report to be not observed. You also request to remove your failures of selection (FOSS) and a Special Selection Board (SSB). The Board considered your contentions that the fitness report should not have been marked observed and it is administratively incorrect. Specifically, according to the Marine Corps Performance Evaluation System (PES) Manual, the reporting senior (RS) is the first officer or civilian in the reporting chain senior to the Marine Reported On (MRO), directly responsible for the MRO's daily tasking and supervision, and in the best position to observe performance and character. You also contend that according to the PES Manual, the reviewing officer (RO) must get to know the professional capability of the MRO. You assert that during the reporting period, the RS operated from █ whereas you operated from █, thus the RS did not have "meaningful personal contact" and did not observe you to make a fair and significant assessment of your performance. As evidence, you furnished

your Permanent Change of Assignment orders and correspondence from the Chief, Special Assistant United States Attorney.

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 of correspondence from an official entity addressing the agreement between the Marine Corps and the US Attorney Office regarding reporting responsibilities or establishing the US Attorney Office personnel as reporting officials and you provided none. The Board noted that your RS was the Regional Trial Counsel and his comments indicate that he received input from the US Attorney's Office, in addition to weekly reports and status updates. The Board considered the PES Manual guidance noted in your contentions, however, the Board also noted that the PES Manual provides that the "MRO and the reporting officials are not required to be co-located in order for observation to occur." Moreover, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. The Board found your evidence insufficient to overcome this presumption. While the Board considered your response to the AO, ultimately, it was not persuaded by your arguments. As a result, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting modification of the fitness report in question. Based upon the foregoing, the Board also determined that there is no basis for the removal of your FOSs or a SSB. 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,

10/8/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]