



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: 6366-22
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 4 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 23 August 2022 decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), and the 17 May 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 23 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.

The Board carefully considered your request to remove your fitness report for the reporting period 1 December 2020 to 7 June 2021. You also request to remove the 7 June 2021 Administrative Remarks (page 11) 6105 and rebuttal statement. The Board considered your contentions regarding the company commander and the Inspector General (IG) complaints filed against her. You also contend that your fitness report underwent several revisions, and that the other staff non-commissioned officers (SNCOs) that were relieved also received page 11 entries with the same wording. You claim that you filed an IG complaint due to a hostile work environment and toxic command climate, and you received two non-punitive letters of caution as reprisal against you. You also claim that before the commanding officer (CO) transferred, he decided it would be best for the Marines and the new commanders if the company leadership was removed.

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 that your fitness report was marked adverse for Performance, Setting the Example, and Judgement. Specifically, your reporting senior (RS) commented that you set a poor example by intentionally undermining the efforts of the company command along with other SNCOs, which ultimately corrupted and destroyed the unity of command. He also commented that you showed skepticism and doubt amongst junior Marines towards company leadership, were unprofessional towards the battalion medical officer, and contributed to a hostile work environment towards subordinate personnel. In addition, you demonstrated an inability to effectively lead and assist the commander, your negligence and inaction towards cultivating cohesiveness led to a toxic command climate, and the motor transport company officers and enlisted personnel were the subjects of multiple substantiated and unsubstantiated allegations, alleged Prohibited Activities and Conduct violations, infighting, and internal distrust that equated to leadership fratricide. The Board determined that your relief for cause and justification for the adverse marks are comprehensively noted in your fitness report. The Board also determined that revisions to an adverse fitness report are common and do not constitute a basis for removal. Therefore, the Board found your evidence insufficient to warrant removal of your fitness report.

Concerning the removal of your page 11 entry, the Board noted that the removal of your page 11 entry was adjudicated by the Board on 12 July 2022 (Docket Number █), and denied. Based on the lack of new and material evidence regarding this issue, the Board adopted its previous rationale in denying your current request. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You also indicate in your current application that you were the victim of reprisal. As decided in your previous case, the Board determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 U.S.C. 1034. 10 U.S.C. 1034 provides the right to request Secretary of Defense to review of cases with substantiated reprisal allegations where the Secretary of the Navy's follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with Department of Defense policy you have the right to request review of the Secretary of the Navy's decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a *de novo* review and under 10 USC 1034(c) the Secretary of Defense cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Office of Legal Policy, █. Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and, a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the BCNR, therefore, please also include previously presented documentation that supports your statements.

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,

10/16/2022

