



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

█
Docket No. 6965-22
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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 11 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 2 September 2022 decision by the Marine Corps Performance Evaluation Review Board (PERB), and the 1 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 were provided to you on 2 September 2022. 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 1 April 2021 to 14 June 2021 Fitness Report (FITREP). The Board considered your contentions that the report was submitted late and that you did not see the final FITREP after comments were made by the Reviewing Officer before it processed. The Board also considered your contentions that after your removal from your primary military occupational specialty (PMOS), you never received an initial counseling or a change of reporting senior FITREP.

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. In this regard, the Board noted you received the contested report for derogatory material in the form of a 6105 (Page 11) counseling entry for violation of article 92. Although your contention that the report was submitted late has some merit, the Board agreed with the AO that it does not invalidate the report. Regarding your contention that you were not afforded the opportunity to rebut the report after the Reviewing Officer (RO) signed the contested report, the Board noted that the RO marked the report "insufficient" observation and, therefore, there was nothing for you to review or provide comments on.

Finally, Board was not persuaded by your arguments that that your FITREP was invalidated since you never received an initial counseling or a change of reporting senior FITREP. First, the Board noted that you were temporarily removed from your primary duties while a formal investigation took place, which was predicated by your own misconduct. As pointed out in the AO, this action does not invalidate the FITREP. Further, a lack of counseling also does not invalidate the FITREP since counseling can take many forms. The Board thus concluded that your request is lacking in substantial evidence of error or injustice to warrant removal of the FITREP from your record. 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,

10/20/2022

