



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

██████████
Docket No. 7143-22
Ref: Signature Date

██████████ ████████████████████ USMC
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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 22 November 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 September 2022 decision by the Marine Corps Performance Evaluation Review Board (PERB), and the 11 August 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 23 September 2022. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

The Board carefully considered your request to remove your 1 January 2020 to 18 January 2021 Fitness Report as well as your request for an Enlisted Remedial Selection Board (ERSB). The Board noted you presented the same contentions and arguments that you raised in your unsuccessful petition to remove your 9 November 2020 and 4 December 2020 Administrative Remarks 6105 (Page 11) counseling entries (Docket No: 5664-22).¹ Specifically, you contend that you were unjustifiably targeted by the Sergeant Major (SgtMaj) and that these negative comments and adverse markings threaten your possibility for retirement. You claim that while deployed to ██████████, the SgtMaj spoke to the staff non-commissioned officers (SNCOs) about the Competency Review Board (CRB) process and proceeded to brag about how many SNCOs against whom he had taken adverse action. His comment left you certain that someone in the

¹ The Board concurred with the prior Board decision to deny your petition to remove your 9 November 2020 and 4 December 2020 Page 11 counseling entries because you did not submit new matters not previously presented to or considered by the Board.

unit was going to be targeted. The next thing you knew, you were being issued counseling for minor incidents that were beyond your control. You also claim that the counselings were used to “establish a pattern” to refer you to a CRB, that did not end as the SgtMaj intended. You further claim that the counseling directing you to appear before a CRB was removed along with the corresponding adverse fitness report. You assert that your pending Medical Evaluation Board (MEB) will most likely result in a finding that you are unfit for duty making you eligible for the Marine Corps Temporary Early Retirement Authority (TERA) program. You purport that TERA program requests have recently been denied when a Marine’s record contains any reason to deny reenlistment. Lastly, you feel that you should have been selected for promotion to E-7.

The Board, however, substantially concurred with the AO and the PERB decision that the contested fitness report is valid as written and filed, in accordance with the applicable Performance Evaluation System Manual guidance. In this regard, the Board noted that your contentions omit any validation by supporting evidence beyond your statement. Further, the Board noted that the CRB was not conducted until after the period of performance encompassed in the contested fitness report, nor was it referenced in the fitness report.

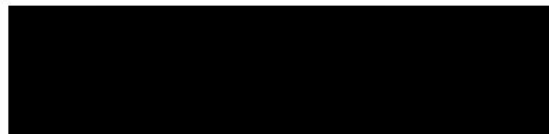
Regarding your claim that you are subject to a MEB, the Board concluded that it has no direct bearing on the perceived validity of the contested fitness report. The Board noted the fitness report is valid as written. Specifically, “[t]he perception that a particular fitness report may reduce the MROs competitiveness for promotion, selection, or assignment is irrelevant in determining whether a report is adverse or not. The adversity is in the recorded performance, not in perceived future competitiveness.”

Next, the fact that in a separate petition (Docket No: 3552-21) you were granted relief for the removal of a 28 January 2021 6105 counseling, and the PERB subsequently removed the associated fitness report, is irrelevant. Removal of the fitness report does not infer transferrable error or injustice to other non-associative fitness reports and each case is considered based upon its merit. The Board thus concluded that your request is lacking in substantial evidence of error or injustice of the contested fitness report, and there is therefore no basis for an ERSB.

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,

12/22/2022



Deputy Director

