



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

██████████
Docket No. 7157-22
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF ██████████
██████████

Ref: (a) 10 U.S.C. § 1552
(b) MCO 1610.7A

Encl: (1) DD Form 149 w/enclosures
(2) Fitness Report for the reporting period 1 Jan 18 to 5 Sep 18
(3) PES ltr 1610 MMRP-30 of 25 Jul 22
(4) CMC ltr 1610 MMRP-13/PERB of 2 Sep 22

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his naval record be corrected by removing his Fitness Report at enclosure (2).

2. The Board, consisting of ██████████, reviewed Petitioner's allegations of error and injustice on 11 October 2022, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval records, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, found as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy. Although Petitioner's 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 the case on its merits.

b. Petitioner was issued enclosure (2), a Transfer Fitness Report for the reporting period 1 January 2018 to 5 September 2018. Petitioner contends that he was unable to complete the 3 mile portion of his physical fitness test (PFT) due to intense wheezing and extreme absence of breath which was later determined by medical to be consistent with mild persistent asthma. Petitioner further contends that the Corpsman who saw him humiliated him over the medical diagnosis and that his command did not accept the medical diagnosis. He further claims that there was no 6105/Page 11 counseling associated with the contested report and therefore the report was not in compliance with policy.

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c. The advisory opinion (AO) at enclosure (3), furnished by the Manpower Management Division Records & Performance Branch (MMRP-30) recommended that Petitioners request be denied. The AO noted, in part, that not only did the Petitioner fail the PFT, but he also failed to requalify with the pistol which rendered the report adverse. Further, the AO claims that the Petitioner did not provide any supporting evidence regarding his contention that the reporting chain showed bias towards the Petitioner's medical diagnosis. Finally, it noted that there is no PES manual requirement that a 6105/Page 11 counseling entry be processed in conjunction with an adverse fitness report.

d. The PERB decision, however, did not concur with the AO and directed that the contested report be retained as filed with modifications. In this regard, the Board noted that the PERB granted favorable relief to the remove any comments regarding the Petitioner's failed PFT. Enclosure (4).

CONCLUSION

Upon review and consideration of all the evidence, the Board concluded that Petitioner's request warrants partial relief. In this regard, the Board concurred with the PERB's decision that Petitioner has not met the burden of proof or shown by preponderance of evidence probable material error, substantive inaccuracy, or injustice warranting removal of the fitness report. In reviewing the action by the PERB, the Board determined any issue related to the PFT in question was adequately addressed by the ordered modifications, with the exception of the issue addressed below. As a result, the Board found insufficient evidence of error or injustice to remove the fitness report from Petitioner's record.

The Board, however, determined that based upon the PERB's decision to modify the fitness report, that it was their intent to remove all comments regarding the Petitioner's PFT failure. The Board thus concluded that the failed PFT score shall be modified in Section A.8.b. to reflect a partial PFT.

RECOMMENDATION

In view of the above, the Board recommends the following corrective action.

Petitioner's naval record be corrected by changing Section A.8.b. of enclosure (2), his Fitness Report for the reporting period 1 January 2018 to 5 September 2018, to reflect "PART" and to include an appropriate Section I comment regarding the completion of a partial PFT in accordance with reference (b).

That no further relief be granted.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above-entitled matter.

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[REDACTED]

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

11/7/2022

[REDACTED]

Executive Director

[REDACTED]