



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

█  
Docket No: 8049-22  
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.

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 24 January 2023. 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 21 October 2022 decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), and the 3 August 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 modify your fitness report for the reporting period █ to █ by changing the report to be not observed. You also request to remove your Fiscal Year (FY) 2024 failure of selection (FOS) and to add the required commendatory comment to Section I. The Board considered your contentions that period of observation was only 56 days, and the Commanding Officer (CO) directed observed reports for all personnel temporarily assigned (augments) to Officer Candidates School (OCS) regardless of the duration of observation. You also contend that the observed fitness report was a violation of the Marine Corps Performance Evaluation System (PES) Manual, resulting in an evaluation based on the status of personnel (temporary vs. permanent). You further contend that the change in reviewing officer (RO) was a procedural failing that unjustly contributed to the low comparative assessment mark and brief word picture. You claim that the reporting officials did

sufficiently observe your performance due to various circumstances peculiar to OCS and an undocumented period of non-availability. You also claim that there was a negative bias against personnel assigned as augments.

The Board noted that the PERB approved a correction to your record by changing the reporting senior (RS) portion of the contested fitness report to be not observed due to periods of non-availability and insufficient observation. The Board, however, substantially concurred with the PERB's decision and AO that the RO portion of the fitness report remains valid as written. In this regard, the Board determined that as the Executive Officer for OCS, the RO was appropriately situated as a member of the chain of command to act as the RO. The Board also determined that according to the PES Manual, the RO is not limited by minimum periods of observation, and the RO has the discretionary authority to decide if the period of observation was sufficient to evaluate a Marine. The Board further determined that dissatisfaction with the comparative assessment mark does not constitute a basis that warrants removal of your fitness report.

Concerning the 30 May 2013, Commandant of the Marine Corps (CMC) policy letter, the Board determined that the CMC policy is not retroactive and you were not disadvantaged or prejudiced by receiving an observed fitness report. The Board also determined that, even with the correction to your record, the change to your fitness report did not meet the threshold for a material error that was significant enough to have altered a promotion board's perception of your performance and conduct. Accordingly, the Board found your evidence insufficient to warrant removal of your failure of selection.

Concerning the addition of commendatory material, the Board determined that you must exhaust your administrative remedies by submitting your request to Headquarter, Marine Corps (MMRP-20). The Board, thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting additional corrective action.

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,

2/8/2023

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Deputy Director

Signed by: █