



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. 8051-22
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 8 December 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 21 October 2022 decision by the Marine Corps Performance Evaluation Review Board (PERB), the 2 August 2022 Advisory Opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30), and your additional statements and information received 21 and 29 November 2022.

The Board carefully considered your request to remove the fitness report for the reporting period 23 November 2019 to 13 May 2020 and the “pass” incurred by the Fiscal Year 2023 (FY23) Major Promotion Selection Board. In support of your request, you submitted positive endorsements from the Reporting Senior (RS) and Reviewing Officer (RO). In his endorsement, the RS stated the “incident that precipitated the adversity present in [your] record is an anomaly in the totality of [your] otherwise exceptional service” and removal “ensures [your] record more accurately reflects the characterization of [your] performance as well as potential for continued service as a field grade officer.” The RO explained that, after reading the investigations into the two negative incidents during training, he considered the incidents “uncontrollable from the perspective of a company commander.” The RO further stated you responded to the adversity by accepting what happened, striving for self-improvement, and growing from the experience. Based on the exemplary performance that followed, even in a forward-deployed environment, the RO urged the Board to “not let the hard-won lessons” you learned go to waste and allow you to compete for promotion with a clean record. Additionally, in your statement of 18 November 2022, you contend the lack of initial counseling and formal counseling regarding the

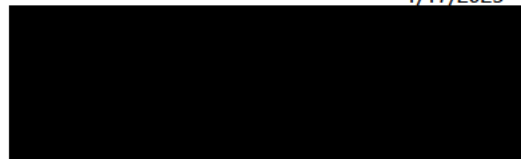
performance of your duties as company commander “constitutes an injustice.” Also, you contend the adverse fitness report is unjust because you did not receive any “negative paperwork” nor did you commit misconduct, but instead you were recommended for retention and promotion by the all three of the reviewing officials. Lastly, in furtherance of your request to remove the failures of selection from your record, you contend that a fitness report modified by the PERB on 9 November 2021 should also be considered when considering your request to remove the “pass.”

The Board, however, substantially concurred with the AO and the PERB decision that the 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 you were relieved of command in the challenged fitness report and action to “undo a relief from command” should not be subsequently taken because the Board, as well as the PERB, is not a “forum for second chances based on performance and conduct outside of the period of performance that was inclusive of documented and substantiated adversity.” The Board further determined the subsequent reconsideration by the RS and RO do not constitute material error or substantive inaccuracy or injustice. The Board noted that your performance after the relief for cause is lauded by the RS and RO but determined your ability and decision to persevere in the wake of the adversity does not warrant a rewrite of the events and consequences captured by the adverse fitness report for the reporting period. The Board also noted your contention initial and/or formal counseling was not received but determined the contention lacks merit because counseling takes many forms and there is insufficient evidence to support your contention. Further, the Board noted your petition lacks any new facts—other than your performance after the reporting period—that were previously unknown at report processing. Lastly, the Board, noting you did not receive any “negative paperwork” nor was it determined that you committed misconduct, determined the fitness report itself states and justifies the adversity captured in the challenged report. Based on the available evidence, the Board concluded there is insufficient evidence of an error or injustice warranting removal of the contested fitness report or removal of your failure of selection by the FY23 Major Promotion Selection Board.

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,

1/17/2023

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Deputy Director

Signed by: 