



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. 8066-22
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 12 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 furnished by the Marine Corps Performance Evaluation Review Board (PERB), and the 15 September 2022 advisory opinion (AO) provided to the PERB by the Manpower Management Division Records & Performance Branch (MMRP-30). The AO was provided to you on 21 October 2022, and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you did not 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 fitness report for the reporting period 12 December 2014 to 19 February 2015. The Board considered your contention that the fitness report should have been unobserved due to the length of the report. You assert that it is unrealistic that a reporting senior (RS) would be able to make the determination that you should

be at the bottom of his profile of 47 Captains within a two month reporting period. You claim that the markings, comments, and comparative assessment reflect the lowest possible evaluation without being technically adverse and the reporting chain did not provide the required directed comments to explain why it was observed. You also contend that the brief reviewing officer (RO) comments are consistent with a report that should have been unobserved. You further contend that the RO did not include narrative comments on your career potential, and he did not amplify his comparative assessment by discussing command assignment, resident professional military education, or retention.

The Board, however, substantially concurred with the AO's decision that your fitness report. As modified, is valid and should be retained as filed. In this regard, the Board noted that the PERB approved a correction to your record by changing the RS portion of the fitness report to be not observed. The Board noted that the reporting period was less than the minimum of 90 days required by the Marine Corps Performance Evaluation System Manual. However, the Board determined that the RO portion of the evaluation is valid because the RO is not constrained by minimum observation requirements. The Board found no error in the RO's evaluation of your performance and concluded that there is no probable material error, substantive inaccuracy, or injustice warranting 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,

12/14/2022

