



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. 8068-22
████████████████████
Ref: Signature Date

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Dear Petitioner:

This is in reference to your applications 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 applications, 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 applications have been denied.

A three-member panel of the Board, sitting in executive session, considered your applications on 22 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 applications, 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 decisions by the Marine Corps Performance Evaluation Review Board (PERB) and the 8 September 2022 Advisory Opinions (AOs) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30).

The Board carefully considered your request to remove your fitness reports for the reporting periods 1 May 2021 to 31 October 2021 and 1 November 2021 to 13 December 2021. The Board considered your contention the report ending 31 October 2021 should be removed because the Reporting Senior comments contain adverse language and are in contradiction to the spirit of the Performance Evaluation System (PES) Manual. Additionally, for the report ending 13 December 2021, you contend that the report is marked "adverse" which is not consistent with the PES Manual or the fact you received no adverse material. Lastly, you contend both reports were in error because they were received well after the end of the reporting periods and unjust because you did not receive counseling, not even after being relieved for continued poor performance.

The Board noted the PERB modified Section I of the report ending 31 October 2021 by: 1) Removing the sentence "[Petitioner's] accomplishments are best met when consistently tasked by his superiors and significance of mission accomplishment is clear and concise." 2) Removing

the phrase “when applied” from the sentence “[Petitioner] possesses the requisite knowledge to be successful when applied.” 3) Removing the sentence “Strongly recommended for assignment to billets that involve routine responsibilities within this military occupational specialty proficiency.” The Board thus substantially concurred with the AO and the PERB Decision that the report ending 31 October 2021, as modified by the PERB, is valid as written and filed, in accordance with the applicable PES Manual guidance. In this regard, the Board noted you omitted any suggestion as to how the contended lack of counseling precluded your apprehension of duty assignments or impeded your ability to perform the assigned duties. The Board noted the timeliness of the report but determined the untimely submission did not invalidate the challenged report or create an error or injustice warranting removal. The Board also noted you omitted any suggestion of irregularity with the Reviewing Officer portion of the report and concluded removal of the report ending 31 October 2021 was not warranted.

With respect to the fitness report ending 13 December 2021, the Board also substantially concurred with the AO and the PERB decision that the reports are valid as written and filed, in accordance with the applicable PES Manual guidance. In this regard, the Board noted your petition lacked specificity as to how the challenged report deviated from the PES Manual guidance. Further, the Board noted the PES Manual does not specifically require the inclusion of derogatory material or disciplinary action in order for a report to be rendered adverse. The Board again noted the timeliness of the report but determined the untimely submission did not invalidate the challenged report or create an error or injustice warranting removal. The Board further substantially concurred with the AO in its discussion regarding counseling and concluded your contentions “no corrective action was provided” nor did you receive a “recommendation on improvement or mentorship” lacked merit.

Based on the available evidence, the Board concluded there is insufficient evidence of an error or injustice warranting removal of the contested fitness reports.

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,

1/18/2023

