



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

██████████
Docket No. 8118-22
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 17 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 by the Marine Corps Performance Evaluation Review Board (PERB), and the 15 August 2022 Advisory Opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30). The PERB decision and the AO were 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.

The Board carefully considered your request to remove your Fitness Report (Fitrep) for the reporting period 28 June 2021 to 9 November 2021 from your official military personnel file (OMPF). You also requested that no related adverse material be added to your OMPF. The Board considered your contention that the conduct of the Expeditionary Warfare School (EWS) inventory Physical Fitness Test (PFT) used as a foundation for nonjudicial punishment (NJP) and adverse Fitrep, was not in accordance with the Marine Corps Physical Fitness and Combat Fitness Tests (MCO 6100.13A) guidance.

The Board, however, substantially concurred with the AO and the PERB decision that, in accordance with the Performance Evaluation System (PES) Manual, the Fitrep was procedurally correct as written and filed. In this regard, the Board noted that you were required to conduct a non-official inventory PFT while in a student status at EWS, as part of the program of

instruction. Although you failed the PFT, the Board noted that the basis of the Fitrep adversity was the disciplinary action taken as a result of your actions post-PFT, and not the PFT failure itself. Furthermore, the Board noted you acknowledged the adverse nature of the Fitrep and, although you maintain you did not conspire with another or make a false official statement, the Board concluded that your commanding officer had the authority to determine whether you committed the misconduct based on the facts and circumstances substantiated in a formal investigation. The Board thus concluded that your request is lacking in sufficient evidence of probable material error, substantive inaccuracy, or injustice warranting removal of the fitness report from your OMPF.

With regards to the removal of all adverse material from your OMPF pertaining to your NJP and all associated documents, the Board determined that the material was included in your OMPF in accordance with the Legal Support and Administration Manual (LSAM) and Officer Administrative Separations (SECNAVINST 1920.6D) guidance. In this regard, the Board noted that the adverse material was reviewed by the Deputy Commandant, Manpower and Reserve Affairs to be sufficient in law and fact, as advised by the Staff Judge Advocate to the Commandant of the Marine Corps, and directed inclusion of the adverse material in your OMPF. The Board thus concluded that your evidence is insufficient to warrant your requested relief.

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,

2/16/2023

