



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

█
Docket No. 9329-22
Ref: Signature Date



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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 9 February 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 16 July 2022 decision by the Marine Corps Performance Evaluation Review Board (PERB), the 17 March 2022 Advisory Opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30), and your rebuttal statement dated 1 February 2023.

The Board carefully considered your request to remove the fitness report covering the reporting period 1 June 2016 to 30 November 2016 and the failures of selection for promotion to the next grade. You contend that since this was the first report on a captain written by the Reporting Senior (RS), there was no RS profile available at the time so you could not evaluate the relative value of the report. Further, you contend the RS did not express any concerns or performance deficiencies that would lead you to believe the report was derogatory. You also contend the "substance" of the report is inconsistent with the attribute markings. Specifically, you contend the Section I comments describe a level of performance more consistent with average or above average markings, and the verbiage, which is potentially misleading to anyone reading the report, makes the RS's intent "unclear." Lastly, you contend there is no "clarification" of the RS's marking philosophy, which is required by the Performance Evaluation System (PES) Manual guidance.

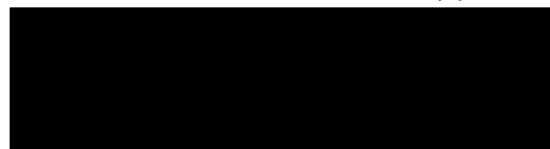
The Board, however, substantially concurred with the AO and the PERB decision that the report is valid as written and filed, in accordance with the applicable PES Manual guidance. In this regard, the Board noted that a report is not considered unjust solely because the relative value is rated lower than other reports. Further, the Board noted there is no PES Manual scale to “match” RS comments with associated attribute markings, nor is any such scale feasible or viable. The Board also considered your contentions regarding the RS’s marking philosophy but concurred with the AO’s statement that you did not offer a compelling argument that the RS “conspired to intentionally write the report with a (future) low relative value, while obscuring intent with favorable comments.” The Board also substantially concurred with the AO’s statement that you failed to provide any evidence, beyond your statement, that your performance and conduct warranted higher marks. Further, the Board noted your petition does not suggest malfeasance or irregularity with the Reviewing Officer’s portion of the contested report, further diminishing the argument for report removal. Noting the contentions you raise and emphasize in your rebuttal to the AO, the Board concluded there is insufficient evidence of an error or injustice warranting removal of the contested fitness report.

Despite the Board’s decision the contested fitness report for the reporting period 1 June 2016 to 30 November 2016 should remain in your record, the Board considered your request for removal of your failures of selection by the Fiscal Year (FY) 2023 and the FY 2024 Marine Corps Active Duty Lieutenant Colonel Promotion Selection Boards. The Board noted the PERB directed removal of your fitness report for the reporting period 1 June 2013 to 31 December 2013 on 15 July 2022. The Board, noting the report was in your record when you failed to select by the FY 2023 Promotion Selection Board, considered whether removal of the report created a significant change in your record that would have improved the perception of your competitiveness had the record been correct at the time the promotion selection board convened. The Board noted removal of the 2013 fitness report took away one of your highest reports, at processing, and determined the change did not constitute a significant change that would have improved the perception of your competitiveness. Moreover, that report had been removed from your record and was not available for review when you failed to select by the FY 2024 promotion selection board. The Board concluded there is insufficient evidence warranting removal of your failures of selection.

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,

3/8/2023

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Deputy Director

Signed by: 