



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

█  
Docket No. 26-23  
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.

A three-member panel of the Board, sitting in executive session, considered your applications on 18 April 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 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 5 January 2023 Advisory Opinion (AO) provided by Navy Personnel Command (PERS-32) and your response to the AO.

The Board carefully considered your request to remove your Fitness Report & Counseling Record (Fitness Report) for the reporting period 20 November 2020 to 28 May 2021. The Board considered your contentions that the fitness report was based on non-adjudicated investigation with offenses that were unanimously found unsubstantiated at a Board of Inquiry (BOI). The Board also considered your claim that the adverse nature of the report was reprisal for a congressional inquiry you wrote to your congressional representative.

The Board, however, substantially concurred with the AO that the fitness report is valid as written and filed, in accordance with the applicable Navy Performance Evaluation System guidance. Specifically, the Board noted that the EVALMAN states that fitness reports should take into account misconduct that has been established through reliable evidence to the reporting senior's satisfaction. Further, the Board notes that pursuant to the EVALMAN, the Commanding Officer or Officer in Charge does not have to conduct an investigation, issue Nonjudicial Punishment or censure to document misconduct in a fitness report. In your case, the Board noted that the RS provides justification for the adverse report in block 41 and comments

on numerous findings of misconduct. Furthermore, the Board noted that you provided no evidence that the fitness report violates the policy nor proof that the reporting senior acted for an illegal or improper purpose.

In regards to your contention that the BOI found no basis for any of the charges listed, the Board noted that a BOI is a board convened under section 1182 or section 14903 of title 10 to receive evidence and make findings and recommendations as to separation for cause, characterization of service, and, in some cases, a retirement grade recommendation of a commissioned officer. The administrative separation process is not intended as, nor does it function as a method to overturn or invalidate other Navy procedures. Thus, the Board determined that, although the BOI did not support separation for cause, it does not override the RS responsibility to evaluate and comment on the your performance, nor did it determine the FITREP to be unjust. The Board thus concluded that your request is lacking in sufficient evidence of error or injustice warranting the removal of the fitness report in question from your record. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

The Board also determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC 1034. The Board agreed with the Naval Inspector General and Department of Defense Inspector General determinations that there was no causation between your protected communication and the fitness report in question.

10 USC 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy's follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with DoD policy you have the right to request review of the Secretary of the Navy's decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a de novo review and under 10 USC 1034(c) the Secretary of Defense cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the [REDACTED]

[REDACTED] Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and, a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the BCNR, therefore, please also include previously presented documentation that supports your statements.

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,

5/5/2023

