



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

██████████
Docket No. 361-23
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 24 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. The Board also considered 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) from your previously considered petition to remove a contested Fitness Report (Fitrep), Docket No. 8118-22.

The Board carefully considered your request to remove your 9 November 2021 nonjudicial punishment (NJP), your Fitrep for the reporting period 28 June 2021 to 9 November 2021, and a Report of Misconduct and associated material. The Board considered your contention that the Physical Fitness Test (PFT), used as a foundation for NJP and adverse Fitrep, was not in accordance with the Marine Corps Physical Fitness and Combat Fitness Tests (MCO 6100.13A) guidance, and that it was not an official PFT, which would render your NJP unjust. You also argue that you did not conspire to falsify any records.

The Board, however, determined that given the presumption of regularity, your petition amounts to an unsupported claim that the action taken by your command was incorrect and improper. This unsupported claim is not enough to overcome the objective evidence of your actions, which was brought forth by the command after the allegations were substantiated within a formal investigation and its connection to the issuing official's decision to impose NJP for conspiring to

make a false official statement. The Board noted that prior to the imposition of NJP, you acknowledged your Article 31b, Uniform Code of Military Justice Rights, you agreed to accepted NJP, you certified that you were given the opportunity to consult with a military lawyer, acknowledged your right to appeal, and you elected not to appeal your commanding officer's (CO) finding of guilt at NJP.

Whether the PFT was "official" or not, the Board determined that your CO had sufficient evidence to impose NJP, despite your continued insistence that you were unaware of the inaccurate score. Moreover, he acted within his discretionary authority, and conducted your NJP pursuant to the Manual for Courts-Martial (2019 ed.). The Board thus concluded that your request is lacking in sufficient evidence of probable material error, substantive inaccuracy, or injustice warranting removal of the NJP from your Official Military Personnel File (OMPF). The Board determined that, by not removing the NJP from your OMPF, there is no bases for removal of your contested Fitrep or other associated adverse material.

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,

2/22/2023

