



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. 517-23
Ref: Signature Date

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Dear █

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 7 March 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 carefully considered your request to remove the 6 July 2022 Administrative Remarks 6105 (page 11) entry and associated rebuttal statement. You also request to remove the fitness report for the reporting period 1 January 2022 to 6 July 2022. The Board considered your statement and contentions that the page 11 entry was improperly issued because it is based on incorrect facts and conflicting evidence, the command precluded you and your counsel from properly rebutting the page 11 entry, and the page 11 entry was not properly submitted. You also contend that there is absolutely no evidence that you provided false information about your physical fitness test (PFT) scores, there was no determination that your scores was falsified, and without evidence, the commanding officer (CO) required you to retake the PFT. You further contend that the page 11 entry imposed an arbitrary five working-day time limit. While five days may be reasonable in many instances, in this case it was not, and it violated your due process rights. In addition, the command did not expeditiously process the page 11 entry and impacted your ability to petition the Board in a timely manner. You claim that your CO relied on a separate preliminary investigation convened by a separate command. You also claim that

the CO alleged that you falsified the previous PFT because you did not achieve the same score on the subsequent PFT.

The Board, however, determined that your page 11 entry is valid. In this regard, the Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a 6105 entry counseling you for lack of integrity and providing false official statements. The Board also noted that you acknowledged the entry and in your statement, you denied the allegations. The Board also determined that the contested entry was written and issued according to the MARCORSEPMAN. Specifically, the entry provided written notification concerning your deficiencies, specific recommendations for corrective action, where to seek assistance, the consequences for failure to take corrective action, and it afforded you the opportunity to submit a rebuttal. Moreover, your CO signed the entry, and he/she determined that your substandard performance/misconduct was a matter essential to record, as it was his/her right to do. The Board further determined that the five working days provided to submit a statement was not arbitrary. According to the Marine Corps Individual Records Administration Manual, Marines will have five working days after referral of page 11 entries concerning misconduct or substandard performance to return the completed statement to the commander for filing in the service record. The Board concluded that your due process rights were not violated since your statement was submitted after five working days, your statement was accepted, and is on file in your official record.

The Board determined that your CO's reliance on the investigation was not erroneous or an abuse of discretion. The statements regarding your reasons for taking a PFT, as the sole participant, proctored by a service member outside of your command, ultimately formed the underlying basis for your CO's conclusion that your statements to the IO were false. The Board also determined that your CO acted within his discretionary authority when deciding that your page 11 entry was warranted. Moreover, the Board found no evidence that your command intentionally delayed the submission of the entry to affect the timing or your ability to petition the Board. Thus, the Board also concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Concerning your request to remove your fitness report for the reporting period 1 January 2022 to 6 July 2022, the Board determined that you have not exhausted your administrative remedies. The Performance Evaluation Review Board (PERB) is the initial action agency for fitness report appeals, therefore, you must submit your request to the PERB according to the Marine Corps Performance Evaluation Appeals Manual.

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,

3/23/2023

[REDACTED]

Executive Director

Signed by: [REDACTED]