



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. 1709-23
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.

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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application 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 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 13 February 2023 decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), and the 1 November 2022 advisory opinion (AO) provided to the PERB by the Manpower Management Division Records & Performance Branch (MMRP-30). The AO was provided to you on 13 February 2023, and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully considered your request to remove your fitness report for the reporting period 1 July 2018 to 31 January 2019. The Board considered your contention that the fitness report was improperly written, improperly processed, and failed to meet the rules and standards according to the Marine Corps Performance Evaluation System (PES) Manual. You also

contend that the fitness report was used in lieu of disciplinary action, was marked adverse before the command investigation was complete, and your record contains no derogatory material. Further, you argue that the reporting senior (RS) revised the Section I comments by removing specifics and added nebulous non-specific comments. You claim that you only had two in person interactions with the RS.

The Board, however, substantially concurred with the AO and PERB's decision that your fitness report is valid and should be retained as filed. In this regard, the Board noted that your fitness report was marked adverse for Setting the Example, Decision Making Ability, and Judgement. The Board also noted that the RS provided the required justification to support the adverse attribute marks and your relief for cause due to performance-related adversity. According to the PES Manual, "For a performance-related relief, the RS must provide the factual basis for the assessment in the justification block of the appropriate attribute and state in section I that the MRO was relieved for cause." The Board determined that your RS was required to submit an adverse fitness report due to your relief for cause. In addition, because your relief was performance related and not due to misconduct, the RS was not required to rely upon a command investigation. Therefore, based on these factors, the Board determined there is insufficient evidence that the fitness report was used in lieu of disciplinary action. The Board also determined that revisions to fitness reports are authorized, you had an opportunity to view the revised report and to submit a rebuttal. Therefore, the Board found that you were not prejudiced by the revisions. As a result, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the fitness report in question. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit 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,

4/27/2023

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Deputy Director

Signed by: █