



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. 2062-23
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 21 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.

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 15 March 2014 to 30 May 2014, and if approved you request to remove your failure of selection. The Board considered your contentions that the reporting period was less than 90 days, required meaningful personal contact, and your reporting chain failed to accrue the 90 day required observation time. You also contend that your reporting senior (RS) was the same grade at the time of the fitness report and the reviewing officer (RO) failed to annotate this as required by the Marine Corps Performance Evaluation System (PES) Manual. You believe the fitness report is the reason you failed selection during the Fiscal Year 2024 Marine Corps Lieutenant Colonel Promotion Selection Board. You claim that this petition contains new evidence that there was no meaningful personal contact with the RS over this short observation period. You

also claim that updates to the PES Manual provide that, for periods of 89 days or less, the RS shall not submit an observed report unless their observation results from meaningful personal contact that is not normally obtainable in a standard work setting.

The Board, however, substantially concurred with the previous Board decision that your fitness report is valid. In this regard, the Board noted that you are relying on an updated version of the PES Manual that was not in effect when your fitness report was written and processed. Accordingly, the Board determined that your reliance on the updated PES Manual requirement is misguided. When fitness reports for periods of 89 days or less were processed during the contested reporting period, the PES Manual authorized RSs to submit an observed report if in their judgment, they possessed sufficient observation, the basis of the observation resulted from meaningful personal contact, and the information provided is significant and provides a fair assessment. In addition, the RS must enter a directed comment invoking an exception to policy. The Board determined that your RS fully complied with established policy and found no evidence that your RS did not have sufficient observation of your performance during the reporting period. The Board also determined that as the company commander, your RS was in billet senior to you, therefore, the RO was not required to make a comment in Section K. Based on the foregoing, the Board found no basis for the removal of your failure of selection. The Board 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.

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.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely, _____

3/31/2023

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Deputy Director

Signed by: █