



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. 2087-23
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 11 May 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 3 March 2023 decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), and the 20 January 2023 advisory opinion (AO) provided to the PERB by the Manpower Management Division Records & Performance Branch (MMRP-30). The AO was provided to you on 3 March 2023, and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you did not 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 the fitness report for the reporting period 1 July 2022 to 4 September 2022. The Board considered your contentions that the fitness report and investigation are unjust and inaccurate, and the adjudication process was unethical, immoral, and procedurally incorrect. The Board also considered your contentions regarding the 16 August 2022 counseling entry; the Investigating Officer's (IO's) finding that you were derelict in your duties; the notification of your relief as the company █ Preliminary Inquiry (PI); and medical screening. You claim that you were the subject of a hostile work environment, and

ostracized for enforcing rules. You also claim that you were targeted, unexpectedly relieved by the battalion Sergeant Major (SgtMaj), and sent home early from deployment pending an investigation.

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 the PI found that you were derelict in your duties, insubordinate, and demonstrated unethical conduct. The Commanding Officer (CO) reviewed the PI, concurred with the IO's findings and determined that your relief as the company █ and early redeployment was duly warranted. The Board also noted that your fitness report was not observed, contained no attribute marks, and did not directly evaluate specific aspects of your performance. The Third Officer Sighter (TOS) adjudicated the factual differences between the comments by your reporting chain and your statement, the TOS thoroughly addressed each of your concerns and provided justification for each finding. Based on the totality of the evidence, the Board determined that your CO relied upon a sufficient evidence, which included a valid PI to support the basis for the fitness reports performance related adversity. The Board also determined that your CO acted within his discretionary authority when determining that your relief and early redeployment were warranted and processed the fitness report according to the Marine Corps Performance Evaluation System Manual.

The Board found no evidence that you were subjected to a hostile work environment, ostracized, or otherwise targeted and you provided none. Moreover, the Board determined that the SgtMaj's notification of your relief was not a material error or injustice. The SgtMaj only informed you of the CO's decision and the CO was not required to personally conduct the notification. The Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. The Board found your evidence insufficient to overcome this presumption. Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting 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,

5/31/2023

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Deputy Director

Signed by █