



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. 2091-23
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 16 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 3 March 2023 decision by the Marine Corps Performance Evaluation Review Board (PERB), and the 22 December 2022 Advisory Opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30). The PERB decision and the AO were 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 chose not to do so.

The Board carefully considered your request to remove your Fitness Report (Fitrep) for the reporting period 1 January 2021 to 4 May 2021. The Board considered your contention that the adverse Fitrep was administered on emotions by your reporting chain of command. Specifically, your reporting senior (RS) was coerced by the reviewing officer (RO) at the time to write an evaluation that was baseline and not in-line with his own personal belief or observation, and there was no physical evidence presented to you for review of the misconduct they claim you committed. As evidence to support your contentions, you submitted two (2) email chains between the RS/RO, in which the RO recommended the RS change the evaluation, and a personal statement to the PERB with a favorable endorsement from the RS for consideration.

The Board, however, substantially concurred with the AO and the PERB decision that, in accordance with the Performance Evaluation System (PES) Manual, the Fitrep was procedurally correct as written and filed. In this regard, the Board determined that the RS adhered to PES Manual guidance when issuing you the adverse Fitrep based on inappropriate actions with your

subordinates and his relevant assessment of your performance at the time, all which was concurred with by the RO. With regards to your belief that the RO coerced the RS in evaluating your performance, the Board determined that the conversation between the reporting officials constituted nothing more than a seasoned officer mentoring and guiding an inexperienced officer in ensuring he adhered to PES Manual Guidance. Specifically, that the Fitrep accurately depicted your performance and conduct over the reporting period. The Board noted the RS' favorable endorsement, which attempts to alter the narrative as to your performance during the reporting period; however, it omits any new information that was unknown at report processing. Moreover, you failed to provide any evidence beyond the RS' concurrence, that your demonstrated performance was not accurately portrayed in the contested Fitrep. The Board thus concluded that your request is lacking in sufficient evidence of probable material error, substantive inaccuracy, or injustice, warranting removal of the Fitrep from your official military personnel file. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You also indicate in your application that you are the victim of reprisal. The Board, however, determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC 1034. 10 USC 1034 provides the right to request Secretary of Defense (SECDEF) review of cases with substantiated reprisal allegations where the Secretary of the Navy's (SECNAV) follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with DoD policy you have the right to request review of the SECNAV decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the SECNAV acted arbitrarily, capriciously, or contrary to law. This is not a de novo review and under 10 USC 1034(c) the SECDEF cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the Under Secretary of Defense for Personnel and Readiness, Office of Legal Policy, 4000 Defense Pentagon, Washington, DC 20301-4000. Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and, a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the BCNR, therefore, please also include previously presented documentation that supports your statements.

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,

6/1/2023

