

DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS 701 S. COURTHOUSE ROAD, SUITE 1001 ARLINGTON, VA 22204-2490

> Docket No. 2094-23 Ref: Signature Date

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 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 the 3 March 2023 decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), and the 24 January 2023 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 did not do so.

The Board carefully considered your request to modify the fitness report for the reporting period 30 September 2017 to 11 June 2018 by removing the reporting senior (RS) evaluation and comments. The Board considered your contention that the fitness report is inconsistent with the Marine Corps Performance Evaluation System (PES) Manual guidance. Specifically, you were the supervisor of a civilian employee with whom the RS had an illicit intimate relationship, and you believe this skewed your markings in an unjust manner. The two are now married and the employee resigned after the reporting period and you were unaware of the relationship. You believe your supervisory position over this employee created conflict between you and the RS, often causing friction and hostility. Once the relationship came to light, a command investigation was conducted and the RS was removed from his position. You assert that your

report average improved when you were no longer in a supervisory position over the employee, despite sustained performance and similar comments within the subsequent report by the same RS. As evidence, you submitted a copy of the redacted command investigation, Marine Corp order on fraternization, and commander's policy on fraternization for consideration.

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 found no evidence that your role as supervisory over the civilian employee or the purported RS relationship with the employee skewed your markings in an unjust manner and you provided none. The Board noted that the command investigation failed to substantiate any misconduct by your RS. Moreover, the investigation was completed more than years after your fitness report was process. The Board determined that there is insufficient evidence of bias. 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.

