



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. 2123-23
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 4 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), the 14 October 2022 advisory opinion (AO) provided to the PERB by the Manpower Management Division Records & Performance Branch (MMRP-30), and your response to the AO.

The Board carefully considered your request to remove your fitness report for the reporting period 3 July 2021 to 1 April 2022. The Board considered your contention that the reporting senior (RS) was the subject of a Marine Corps Inspector General (IGMC) complaint you submitted due to a toxic work environment. You also contend that the fitness report was completed in reprisal, it was written after the IGMC complaint, and it was routed to the reviewing officer (RO) without any counseling from the RS. You claim that the RS contributed your relative value to being an adjutant and not an aviator. You also claim that you consistently managed the G-1 (a lieutenant colonel's billet) during your tenure, the RS's praises of your performance were inconsistent with a below average fitness report. Additionally, the RS provided no counseling with the exception of the initial counseling. In response to the AO, you claim that the RS's actions placed you at a disadvantage and you will not be considered as competitive for opportunities to command or attend resident professional military education. You also claim that when you requested additional information from the RS, he stopped

communicating with you. As evidence, you provided a statement, emails, and correspondence from the IGMC.

The Board, however, substantially concurred with the PERB's decision and the AO that your fitness report is valid. In this regard, the Board noted the IGMC correspondence indicating that your complaint had merit and the command took appropriate action. The Board found no evidence that your RS was the subject of the complaint or that the basis for the complaint pertained to a hostile work environment created by your RS, and you provided none. The Board also noted the email correspondence and your RS's explanation of his profile dynamics. The Board determined that your RS's explanation was in keeping with the Marine Corps Performance Evaluation System Manual and he was not required to provide further explanation. In addition, the Board noted the RS's intention to counsel you after the RO completed his portion. Regardless, the PES Manual does not require counseling and the lack of counseling does not invalidate the fitness report. The fact that the RS rated other Marine officers assigned to key billets higher than you is not an error or violation of the PES Manual. The Board thus 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 also indicate in your application that you are the victim of reprisal. However, the Board determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC 1034. In making this determination, the Board noted that you filed your IG complaint anonymously and there was no evidence, other than your statement, that your fitness report was issued as a reprisal action.

10 USC 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy's follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with DoD policy you have the right to request review of the Secretary of the Navy's decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a de novo review and under 10 USC 1034(c) the Secretary of Defense 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 (USD(P&R)), 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,

4/11/2023

[REDACTED]

Executive Director

[REDACTED]