



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. 3098-23
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 the 3 April 2023 decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), and the 9 February 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 April 2023. 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 3 March 2022 to 14 May 2022. You also request to remove the 25 April 2022 Administrative Remarks (page 11) entry and Report of Substandard Performance (ROSP). The Board considered your contention that an investigation was launched into your relationship with a female captain you were assigned to work with, when the investigation concluded, it yielded negative results. You also contend that despite the case yielding negative results of any inappropriate relationship, a page 11 entry and Report of Substandard Performance was issued for allowing rumors to form was issued and used in lieu of disciplinary action to make a factually weak or difficult case stick. This derogatory material resulted in an adverse fitness report. You

further contend that until final adjudication the reporting senior (RS) should submit the report without reference to the pending investigation and ensure continuity of reporting by informing the Marine's new RS of the disposition of any pending appeal or investigation. You claim that the final termination of administrative proceedings took place 18 August 2022, while the adverse fitness report covered the dates of 3 March 2022 until 14 May 2022 placing the referenced adverse material outside of the covered date range and should not have been applicable to fitness report.

The Board noted the 26 February 2022, Criminal Investigation Division, Report of Investigation (ROI) into allegations of Articles 133 (Conduct Unbecoming of an Officer and a Gentlemen), Article 92 (Failure to Obey a Lawful Order or Regulation), and Article 107 (False Official Statement) was forwarded to the [REDACTED] for prosecutorial determination. The Report of Investigation did not include any findings and/or recommendations regarding perceived innocence or guilt. The Board also noted that you received a counseling entry for demonstrating a lack of proper decorum and engaging in repeated unduly familiar behaviors, while married with a female officer not your wife. In addition, the Commanding General, [REDACTED] submitted a ROSP for inclusion in your record. The ROSP documented the circumstances leading to your counseling entry, relief for cause, and early return from deployment. The Board noted, too, that your request to remove your counseling entry and ROSP were previously adjudicated and denied by the Board on 7 March 2023, therefore, the Board only considered your request to remove your contested fitness report.

The Board, however, substantially concurred with the AO and the PERB decision that the report is valid as written and filed. In this regard, the Board noted that the fitness report was not observed, marked adverse due to receiving the counseling entry and ROSP that were reviewed, processed, and included in your record according to regulations. The Board also noted that the investigation was not referenced in the fitness report, you acknowledged and accepted adverse nature of the report, and the Third Officer Sighter found no factual differences to adjudicate. 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,

6/5/2023

[REDACTED]

Deputy Director

Signed by: [REDACTED]