



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. 3107-23
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.

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 30 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 by the Marine Corps Performance Evaluation Review Board (PERB), and the 12 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 April 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 31 December 2016 to 3 June 2017. The Board considered your contention that the marked decrease in performance by the reviewing officer (RO) without explanation contradicts Performance Evaluation System (PES) Manual guidance. Specifically, "An MRO you are assessing in back-to-back reporting periods, and whose performance remains constant, should receive at least the same mark as you assigned to the prior report." You were marked lower by the same RO during back-to-back reporting periods and you believe since your performance remained constant, as demonstrated by the reporting senior (RS) markings and comments by two different RS's, therefore, you should have been given at least the same RO marking as the previous Fitrep.

The Board, however, substantially concurred with the AO and the PERB decision that, in accordance with the PES Manual, the Fitrep was procedurally correct as written and filed. In this regard, the Board determined that the RO adhered to PES Manual guidance when providing an appropriate comparative assessment marking based on his assessment of your potential in comparison to all Marines of your grade to whose professional abilities are known to the RO. Moreover, the Board noted the reduction in your comparative assessment marking from your previous Fitreps to which you had the same RO; however, determined that the RO marked you accordingly, based on his observation, for a different duty assignment. In the challenged Fitrep, your assigned duty assignment was as the Company Commander. Your assigned duty assignment in your previous Fitrep was as the Battalion Operations Officer. As such, the Board determined that your contention lacks merit. Furthermore, the Board determined that you failed to provide any evidence that your demonstrated performance was not accurately portrayed in the contested Fitrep, that the RO's subsequent reduction of your assessment was unwarranted, or that the RO acted maliciously against you. 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 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,

6/15/2023

