



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. 3260-23
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 23 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 previous 24 May 2021 Advisory Opinion (AO) provided by the Marine Corps Performance Evaluation Review Board (PERB), and the previous 5 February 2021 AO provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30). You were previously afforded an opportunity to respond to the AOs.

The Board determined that your personal appearance, with or without counsel, would 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 or modify your Fitness Report (Fitrep) for the reporting period 1 June 2019 to 10 October 2019 by making it adverse. You did not present new contentions; however, the Board considered your previous contentions that center on the reporting chain violated the tenets of the Commandant of the Marine Corps (CMC) White-Letter 4-20, which was promulgated on 9 October 2020. Specifically, that matters involving a relief for cause or reassignment based on loss of confidence must be recorded as an adverse Fitrep. The Board further considered your contentions that the basis of the Fitrep was a "soft relief" without any notice or opportunity to respond, thereby denying your due process rights, the

basis of the “soft relief” was unfounded claims, and the change in the reviewing officer’s (RO) comparative assessment was not justified. You also presented as new evidence, your counsel’s brief that amplifies your contentions. Specifically, that Performance Evaluation System (PES) Manual guidance and the CMC White Letter 4-20 involving relief must be considered adverse, the PES Manual states Fitreps must reflect an assessment of performance of assigned duties and responsibilities against an understood set of requirements, individual capacity, and professional character, the Fitrep was inconsistent with the “glowing” letter of recommendation submitted by the reporting senior (RS) for an advanced intermediate level school, the Fitrep did not contain an occasion code, and the Fitrep is a classic faint praise Fitrep as evidenced by the contrast in opinions with the preceding Fitrep.

The Board, however, substantially concurred with the previous PERB and AO decisions that the Fitrep was procedurally correct as written and filed in accordance with the PES Manual at the time of issuance. The Board carefully considered your contentions and your counsel’s brief; however, found no evidence that your transfer to the Marine Expeditionary Force constituted a “soft relief.” The Board determined that your RS and RO acted in accordance with PES Manual guidance in issuing you the contested transfer Fitrep for the reporting period and the command did not violate the tenets of the CMC’s White Letter 4-20, as it was not in effect at the time.

With regards to your contentions that the Fitrep was inconsistent with the letter of recommendation provided by the RS and the comparative assessment marking was not justified, the Board determined that the you did not provide any evidence, beyond your own subjective statement, that the reporting official’s comments and markings were not reasoned, nor based on valid consideration of your performance and future potential. The Board thus concluded that your request is lacking in substantial evidence of material error, substantive inaccuracy, or injustice warranting modification or 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,

6/8/2023

