



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

█
Docket No. 4258-23
Ref: Signature Date



Dear █

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 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.

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 your Combat Fitness Test (CFT) of 2 December 2022 as well as the associated 7 December 2022 Administrative Remarks (Page 11) counseling entry and associated rebuttal. The Board also noted your request to change the adverse nature of a fitness report for the period 18 March 2022 to 31 May 2023. The Board considered your contention that you had a number of underlying medical conditions at the time. The Board also considered your assertion that in your arrogance you believed you could still pass despite the pain and conditions you were experiencing. The Board considered your contention that you had just returned to full duty in September of 2022 as well as your claim that you began experiencing lower back pain around this time. Finally the Board also considered your claim

that you did not receive a diagnosis until 6 months after the CFT and that you won't receive treatment until June of 2023.

The Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a 6105 entry counseling you for failing the annual Marine Corps CFT in accordance with MCO 6100.13A. The Board also noted that you acknowledged the counseling entry and in your statement, accepted that you failed the Movement to Contact portion of the CFT. You also acknowledged that you believed you could push through the medical issues you were experiencing at the time and your lack of judgement for not prioritizing your work and personal health. However, the Board determined that the contested counseling entry was written and issued according to the MARCORSEPMAN. Specifically, the counseling entry provided written notification concerning your deficiencies, specific recommendations for corrective action, where to seek assistance, the consequences for failure to take corrective action, and it afforded you the opportunity to submit a rebuttal. Moreover, your commanding officer (CO) signed the counseling entry, and he/she determined that your substandard performance/misconduct was a matter essential to record, as it was his/her right to do. The Board, thus determined that the CO relied upon sufficient evidence and acted within his/her discretionary authority when deciding that your counseling entry was warranted.

Moreover, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. The Board found your evidence insufficient to overcome this presumption.

Finally, the Board noted that pursuant to MCO 6100.13, a counseling entry is required when a Marine has failed a CFT in accordance with the IRAM. Moreover, the Board noted that you elected to run the CFT and that your injury did not absolve you from the responsibility to inform your chain of command that you were still injured prior to the scheduled event. In making this finding, the Board considered that you attempted to take the CFT and appeared to seek a medical waiver only after failing it. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the contested CFT, associated counseling entry, and rebuttal to the counseling entry. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Regarding your request to modify the contested fitness report, the Board noted the report was not yet in your record. Regardless, the Board also noted that you have not yet exhausted your administrative remedies by applying first to the Marine Corps Performance Evaluation Review Board. Therefore, this aspect of your application was not considered by the Board.

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,

6/9/2023

[Redacted signature area]

Executive Director

Signed by: [Redacted name]