



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

█
Docket No. 5139-23
Ref: Signature Date



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 applications on 17 October 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 applications, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations and policies, as well as the 23 June 2023 Advisory Opinion (AO) provided by the Office of Legal Counsel (BUPERS-00J). The AO was provided to you on 11 September 2023. Although you were afforded an opportunity to submit a rebuttal, you chose not to 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 your Fitness Report & Counseling Record (Fitness Report) for the reporting period 12 February 2015 to 29 February 2016 and associated material. The Board considered your assertion that you have learned from your mistakes and you wish to continue to serve in the United States Naval Reserve. The Board also considered your contention that omission of the adverse Fitness Report will allow your processing to move forward and enable your direct commission.

The Board, however, substantially concurred with the AO that the Fitness Report is valid as written and filed, in accordance with the applicable Navy Performance Evaluation System (PES) guidance. In this regard, the Board noted your argument that the fitness report should be removed based upon subsequent positive performance evaluations; however, the Board determined this was insufficient evidence to establish a material error or injustice. Thus, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the fitness report and associated materials. 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,

10/28/2023

