



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. 5692-23
Docket No. 5696-23
Ref: Signature Date

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Dear █

This is in reference to your applications 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 applications, 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 applications have been denied.

A three-member panel of the Board, sitting in executive session, considered your applications on 3 August 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 20 June 2023 decisions by the Marine Corps Performance Evaluation Review Board (PERB) and the 16 March 2023 and 24 April 2023 Advisory Opinions (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30).

The Board determined your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully considered your request to remove and/or modify the fitness reports for the reporting periods 26 April 2012 to 31 May 2013 and 18 June 2016 to 14 June 2017. Specifically, you requested modification of the fitness report ending 31 May 2013 by changing the comparative assessment block to "5." For the fitness report ending 14 June 2017, you requested "the least severe corrective action" be taken by removing the relative value of the report, but, if the requested correction is not possible, you requested removal of the fitness report.

You contend the comparative assessment on the annual fitness report ending May 2013 is "erroneous due to administrative error." In support of your contention, you submitted a letter

from the Reviewing Officer (RO), now retired from active duty, requesting the “erroneous RO marking” be corrected to reflect the “5” block. The RO stated he “mistakenly marked [you] in a lower block than intended,” and the error was “due to a misapprehension on [his] part when considering recommended markings by his Reporting Senior.”

You contend the transfer fitness report for the reporting period 18 June 2016 to 14 June 2017 is in error and/or unjust because minimum counseling requirements were not met, causing your markings to be “a complete surprise.” Additionally, you contend that as an officer and Marine, you should be “afforded clear guidance and an opportunity to course correct” and, at a minimum, you “rate formal initial guidance.” You also contend the lack of counseling resulted in a report that was in “direct contradiction” to the Performance Evaluation System (PES) Manual because the report “was relied on as a tool to force changes.” Further, you contend the lack of required counseling and low markings “appear to be the result of a personality conflict” evidenced by the repeated times you were informed by others that the RS did not like you and “an attempt to avoid an uncomfortable situation.” In support of your contentions, you submitted five advocacy statements from various senior enlisted Marines and the prior Executive Officer.

The Board substantially concurred with the AO and the PERB decision that the fitness report ending 31 May 2013 is valid as written and filed, in accordance with the applicable PES Manual guidance. In this regard, the Board noted that while the former RO expresses good intentions to improve your profile placement, his endorsement omits any new facts that were unknown at report processing, a requirement for substantive correction. The Board, in concurrence with the AO, was unwilling to revise the RO’s original assessment based simply on his request which omitted any discussion of the cause and effect the changes would have on other peer Captains in the same grade cumulative profile.

The Board, also, substantially concurred with the AO and the PERB decision that the fitness report ending 14 June 2017 is valid as written and filed, in accordance with the applicable PES Manual guidance. In this regard, the Board noted your requested “least severe corrective action” cannot be granted because values cannot independently and/or arbitrarily be removed from a fitness report or the master brief sheet. Additionally, the Board noted that relief is not granted simply on the basis of an alleged absence of counseling since counseling takes many forms and further noted you omitted any suggestion as to how the purported omission impeded your ability to perform your assigned tasks. The Board, noting the advocacy statements explaining the RS’s dislike of you but also noting the lack of specificity with how his “dislike” of you impacted your marks or his comments, concurred with the AO’s discussion that the PES Manual does not require the RS to “like” you. Also, from a review of the email correspondence submitted by you, the Board noted your “surprise” appears to have been with the relative value and not the markings per se and determined the “surprise” does not invalidate the challenged report. Lastly, the Board noted the former RS’s letter to the President of the Fiscal Year 2020 Commandant’s Intermediate-Level Education Board, specifically the explanation that your below average relative value was due to the RS’s competitive profile and “should not be viewed in a derogatory manner.”

Based on the available evidence, the Board concluded there is insufficient evidence of an error or injustice warranting removal and/or modification of the contested fitness reports.

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,

8/31/2023

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Deputy Director

Signed by:

A black rectangular redaction box covering the name of the Deputy Director.