



**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. 5701-23  
Docket No. 5702-23  
Ref: Signature Date

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Dear Petitioner:

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 24 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 22 December 2022 and 25 January 2023 Advisory Opinions (AOs) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30). Although you were provided an opportunity to respond to the AOs, you chose not to do so.

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 the fitness reports for the reporting periods 1 June 2018 to 31 May 2019 and 1 June 2019 to 1 October 2019 because the fitness reports are unjust. Specifically, you contend the reports are unjust and were written by the Reporting Senior (RS) in retaliation for your "refusal to cut corners by engaging in actions that violate the fiscal law..." Additionally, you contend the RS used the fitness reports to retaliate against you "for reporting his behaviors and actions towards [you] to the █ commanding officer via the executive officer." In support of your request for relief, you submitted a detailed statement which provides discussion and explanation of your 48 enclosures. Of specific note,

you explain that the supporting documents/evidence/enclosures are “provided to show the RS’s claims depicted in the formal counseling were unsubstantiated” and the two “below average” reports were “unjust and an act of reprisal.” The Board noted the contentions, statements, and enclosures were the same for each of your applications but carefully considered each page of your voluminous submissions.

The Board substantially concurred with the AOs and the PERB decisions that the reports are valid as written and filed, in accordance with the applicable Performance Evaluation System Manual guidance. In this regard, the Board noted your petitions omit any specification of perceived error or injustice within the actual reports; you simply contend the reports are “below average” and unjust acts of retaliation and/or reprisal. The Board carefully reviewed each contested report for adversity, derogatory comments, or anything resembling a marking or comment that could be viewed as “retaliation” or “reprisal” but, absent any specific contention by you of error or injustice within the pages of the fitness reports, the Board did not note anything within the reports that was adverse, derogatory, negative, etc. The Board carefully considered your discussion of the enclosures and the enclosures and determined the numerous enclosures are insufficient in establishing your underlying contention the reports were written by the RS in retaliation and/or reprisal. Further, assuming for the sake of argument, that your communications with the RS’s chain of command could be construed as protected communications, the Board noted there is insufficient evidence that the fitness reports were not unfavorable and specifically noted there was no causal link between your alleged communications and the contested reports. As a result, the Board concluded there is insufficient evidence of an error or injustice warranting removal of the contested fitness reports. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

The Board thus determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC 1034. 10 USC 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy’s follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with Department of Defense policy you have the right to request review of the Secretary of the Navy’s decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a *de novo* review and under 10 USC 1034(c) the Secretary of Defense cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the Under Secretary of Defense for Personnel and Readiness, Office of Legal Policy, 4000 Defense Pentagon, Washington, DC 20301-4000. Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and, a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the BCNR, therefore, please also include previously presented documentation that supports your statements.

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,

9/7/2023

