



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. 5909-23
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 12 September 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 20 June 2023 decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), and the 15 March 2023 advisory opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30). The AO was provided to you on 20 June 2023, and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

The Board carefully considered your request to remove the fitness report for the reporting period 1 June 2020 to 13 May 2021. The Board considered your contention that the fitness report was unjustifiably marked lower by the same Reporting Senior (RS) from the previous reporting period. You claim that a fitness report with lowering markings by the same RS can impact a Marine's career, to include their selection for promotion, command, and special programs. You also contend that the fitness report does not provide an accurate word picture, does not include required directed comments that would qualify as justification for the lowered markings, and it contains multiple administrative errors demonstrating a lack of integrity to his evaluation responsibilities by the RS. You further contend that the RS did not make required directed comments to disadvantage you against contemporaries, and the RS unduly influenced the Reviewing Officer (RO) to place you at an undeserved disadvantage. The RS thus violated the

spirit, integrity, and intent of the Performance Evaluation System (PES) Manual. You also claim that the RO only observed you for six of the 12 months, you were not subject to any negative or adverse material during the reporting period, and the RS was the originator of your Navy and Marine Corps Commendation Medal.

The Board, however substantially concurred with the AO and PERB's decision that your fitness report is valid as modified, in accordance with the applicable PES Manual. In this regard, the Board noted that the PERB approved a correction to your record by modifying the Section I, Directed Comment for superior physical fitness by changing 300 to 290. The Board also noted that the RS had a significantly longer period of observation during the contested reporting period. The Board found no PES Manual guidance prohibiting RSs from adjusting attribute markings on subsequent fitness reports. Moreover, each reporting period constitutes a separate and distinct period of observation. The Board determined that no additional directed comments were required, and negative or derogatory material is not required for a RS to lower attribute marks. The Board found no evidence that the RS failed to properly execute his responsibilities or that he unduly influenced the RO. In addition, there are no minimum restrictions for a RO's period of observation, and the receipt of a personal award is not sufficient evidence that you warranted higher marks than you received. Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting additional 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,

9/28/2023

