



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

██████████
Docket No. 6843-23
Docket No. 6844-23
Docket No. 6845-23
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 12 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 ██████████ decisions by the Marine Corps Performance Evaluation Review Board (PERB) and the ██████████, ██████████, and ██████████ Advisory Opinions (AOs) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30). Although you were given 30 days in which to submit a response, you chose not to do so.

NR20230006843

The Board carefully considered your request to modify the Annual (AN) fitness report for the reporting period 12 April 2019 to 31 May 2020 by significantly adjusting the Reporting Senior (RS) and Reviewing Officer (RO) marks and comments to “appropriately reflect [your] performance during that time, a top third report from the RS and RO as stated by the RS.” If the option to modify the report is not possible, you requested to completely remove the AN fitness report. Additionally, as part of your statement dated 1 April 2023, you requested removal of the following comment from the Section I comments: “continue to groom for higher levels of responsibility.” You contend the report is unjust due to bias and multiple violations of the Performance Evaluation System (PES) Manual. Specifically, you contend the following:

1) The report is a “welcome aboard” report which violates the PES Manual by skewing your performance. Further, you contend the RS justified ranking you lower and did not evaluate you based on your performance and attributes.

2) The report violates the PES Manual’s requirement that grades be “earned by the MRO’s displayed effort and apparent results” rather than be “given to attain a perceived fitness report average or relative value.” You state that “clearly this report was written to give a low score which would constitute a below average report, with an attempt for it to appear as though an above average report.” You further contend you never received any negative counseling concerning your performance but only “accolades for [your] shop’s exceptional performance.” Also, you provided an email wherein the RS mentioned you were “top third, keep up the good work” but contend the RS’s report average, which is currently a 4.24, is much higher which makes this 3.79 report significantly below average per the RS’s marking philosophy. You also contend that “markings of many of the attributes are not accurate” and then specifically note only the “C” received for “Professional Military Education.”

3) The RS violated the PES Manual because his Section I comments are inconsistent with his markings. You specifically note the phrase “continue to groom for higher levels of responsibility” seems to have been “strategically placed to sway a promotion board to not select for promotion, without any actual justification.”

4) The PES Manual requires the RS to discuss his marking philosophy and comments with you prior to routing the report to the RO. Further, you contend that when you discussed the grading with the RS and inquired about his view of your performance, the RS mentioned “top third” with a numerical value of 96.88. You contend the markings and comments of both the RS and RO do not make sense and, after consulting with senior officers, revisiting your record, and doing additional research, you determined “this was wrong in every way and a significant injustice that needed to be corrected to accurately reflect [your] performance.”

5) The RS violated the PESMAN because a RS “must understand the significance of maintaining a consistent marking philosophy throughout [his] career.” The fact your performance was “said to be top third but on subsequent reports [your] performance is now well below his average, in line with the bottom third” shows a “significant inconsistency” in the RS’s marking philosophy.

6) The RO graded you a block lower in this report than on “the” previous report although the PES Manual requires a RO to assess back-to-back reporting periods, when performance remains constant, with at least the same mark. You further contend the RO never clearly explained his grading philosophy because your performance did not change for the worse, “if anything, it had improved.” Additionally, you contend you were marked low on this report due to bias. In support of your contention, you submitted a personal statement which provided a detailed background discussion, an affidavit written by a former [REDACTED], email correspondence, and an advocacy letter written by a Lieutenant Colonel (LtCol) to the Senior Member of a Board of Inquiry.

The Board, however, substantially concurred with the AO and the PERB decision that the fitness report ending 31 May 2020 is valid as written and filed, in accordance with the applicable PES Manual guidance. In this regard, the Board concurred with the AO, and was unwilling to assume the role of the reporting chain and independently and arbitrarily change markings and comments based on your demonstrated performance and conduct, without justification and/or genesis of valid endorsement from the designated reporting officials. Further, the Board concurred with the AO that the specific comment regarding grooming for higher levels of responsibility was not overtly negative and/or adverse and declined to remove the comment. The Board also substantially concurred with the AO and determined your suggestion of bias based on an undocumented Inspector General complaint filed against an officer who was not in your reporting chain was unconvincing. Additionally, the Board noted your petition lacks evidence that clearly suggests the RS maliciously conspired to grade you with a report average reflective of high relative value at report processing with the intent for the report average to reflect a lower relative value in the future. Lastly, the Board concurred with the AO and determined decreased RS cumulative relative value and reduction in the RO comparative assessment, absent compelling evidence to suggest otherwise, do not warrant favorable consideration.

NR20230006844

The Board carefully considered your request to remove the Change of Reporting Senior (CH) fitness report for the reporting period 2 April 2016 to 1 July 2016. You contend the contested report is in error and/or unjust due to the numerous violations of the PES Manual. Specifically, you contend it was error for the report to be written by a fellow Major who did not have a profile and had just assumed the duties of squadron Executive Officer because it “show unethical bias that cannot be explained in any comments.” Further, you contend this was a departure from the squadron norms which reflected a significant change in both routing and marking philosophy, constituting a “skewed performance record.” You further contend the report should have been a non-observed report due to extended periods of limited observation time and multiple periods of non-availability. Specifically, you contend that your six days of leave, 10 days of temporary duty, for a total of 16 days non-availability in a 90-day period, resulted in 74 days of observed time, significantly less than the required 90-days. Lastly, you contend this was your first report as a newly promoted Major and you were new to the squadron so your report, written by your peer, was merely a “welcome aboard report” which skewed your performance record.

The Board, however, substantially concurred with the AO and the PERB decision that the fitness report ending 1 July 2016 is valid as written and filed, in accordance with the applicable PES Manual guidance. In this regard, the Board noted your purported periods of non-availability do not conform to the PES Manual guidance so your report covered a period of 91 days which warranted an observed report. Further, the Board noted the RO’s Section K directed comment authorizing the same grade RS and concurred with the AO that it was not error or unjust for the RS to be the same rank.

NR20230006845

The Board carefully considered your request to amend the "From Duty" (FD) fitness report for the reporting period 2 February 2019 to 11 April 2019. Specifically, you requested the Board modify the RO's comparative assessment to "block 6 or higher to reflect a top tier Marine." You further requested the RO markings and comments be modified to reflect you as a "must for promotion to LtCol." You contend the contested report is in error and/or unjust due to the numerous PES Manual violations and the Section K markings and comments. Specifically, you contend the RO's concurrence with the RS evaluation is not accurately reflected in the Section K comparative assessment markings. By marking block "5," the RO indicated you were a mid-tier Marine but since the RS's evaluation reflected you as a top tier Marine with a number one report and a relative value of 100, a "bizarre disparity" exists and is not clearly explained. Lastly, since the RO commented that you "performed daily at the O-5 level," the RO's comments should be amended to say you are a "must for promotion to LtCol."

The Board, however, substantially concurred with the AO and the PERB decision that the fitness report ending 11 April 2019 is valid as written and filed, in accordance with the applicable PES Manual guidance. In this regard, the Board concurred with the AO and determined the fact that the RO concurred with the RS's evaluation did not infer any corollary Section K gradation metrics nor pronounced recommendation for promotion. Further, the Board noted the RS's profile is limited to Marines reported on while the RO's comparative assessment is based on a wider spectrum based on comparison of you to all Marines (both past and present) of the grade whose professional capabilities are known to the RO. The Board substantially concurred with the AO and concluded that your request to independently and arbitrarily change the RO's comparative assessment marking and inflate the recommendation for promotion is unfeasible and unwarranted.

Based on the available evidence, the Board concluded there is insufficient evidence of an error or injustice warranting the relief requested for the three 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,

10/26/2023

