



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

█
Docket No. 6847-23
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.

A three-member panel of the Board, sitting in executive session, considered your application 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 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 21 July 2023 decision by the Marine Corps Performance Evaluation Review Board (PERB), and the 1 June 2023 Advisory Opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30). The PERB decision and the AO were provided to you on 21 July 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 your Fitness Report (Fitrep) for the reporting period 28 May 2021 to 30 April 2022. The Board considered your contention that your involvement as a key witness in an investigation against the reporting senior (RS), and there being potential for reprisal by ensuring you remain at the bottom of his profile. You further contend that you provided evidence that due to the toxic culture created by the RS, the Fitrep was unfair as he evaluated you in a biased manner. You assert that an initial counseling was not conducted within the first 30 days, it was backdated to look like it was, and the counseling was so broad and all-encompassing that it did not establish an understood set of requirements. As evidence to support your contentions, you submitted two e-mail chains between the RS and Reviewing Officer (RO), in which the RO recommended the RS change the evaluation, and a personal statement to the PERB.

The Board, however, substantially concurred with the AO and the PERB decision that, in accordance with the Performance Evaluation System (PES) Manual, the Fitrep was procedurally correct as written and filed. In this regard, the Board determined that the RS adhered to PES

Manual guidance when issuing you the Fitrep based on his relevant assessment of your performance at the time, all which was concurred with by the RO. With regards to your belief that the Fitrep was unfair and the RS was biased in his evaluation of your performance given you were a key witness in an investigation to which he was the subject of, the Board determined that you provided no evidence to support this claim. Regarding the command's investigation into the RS, and the statement you provided, the Board noted you provided your statement after the reporting period concluded and it was not convinced that there was a nexus between the RS's evaluation of your performance and the investigation. The Board thus concluded that your request is lacking in sufficient evidence of probable material error, substantive inaccuracy, or injustice, warranting removal of the Fitrep from your official military personnel file.

You also indicate in your application that you are the victim of reprisal. The Board, however, 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 (SecDef) review of cases with substantiated reprisal allegations where the Secretary of the Navy's (SecNav) follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with DoD policy you have the right to request review of the SecNav decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the SecNav acted arbitrarily, capriciously, or contrary to law. This is not a *de novo* review and under 10 USC 1034(c) the SecDef 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 (USD(P&R)), 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,

11/7/2023

