



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. 6859-23
Docket No. 6861-23
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 26 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 21 July 2023 decisions by the Marine Corps Performance Evaluation Review Board (PERB) and the 23 May 2023 and 2 June 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 modify the fitness report for the reporting period 1 June 2013 to 31 December 2013 by changing the Reviewing Officer's (RO's) comparative assessment from block "4" to block "6" or, in the alternative, to remove the report. The Board also considered your request to remove the fitness report for the reporting period 1 June 2019 to 30 June 2020. If the Board made "any positive adjudications of your request[s]," you also requested the Board remove all your failures of selection to Lieutenant Colonel, and if those were removed, you requested the Board direct a special selection board.

The Board noted your previous requests, Docket No. 9004-17 and 4056-20, to modify and/or remove, the 2013 report. The Board noted the “new evidence” you provided as enclosures to your 22 June 2022 statement, however a review of the previous case files revealed several of the enclosures had been provided as supporting evidence in Docket No. 4056-20. Specifically, a previous Board considered the advocacy letter from retired [REDACTED] and the Freedom of Information Act request listed as enclosure (8). However, based on the new contentions -- contained in your lengthy, detailed statement of the “direct and indirect negative impacts” [REDACTED] had on your career over the span of ten years -- and enclosures (9) and (10) of your current submission, the Board reconsidered your request to modify or, in the alternative, remove the 2013 transfer fitness report.

The Board, however, substantially concurred with the AO and PERB Decision that the 2013 report is valid as written and filed, in accordance with the applicable Performance Evaluation System (PES) Manual guidance. In this regard, the Board, noting your argument of “undue influence” by [REDACTED] the Reporting Senior (RS) was not a new contention, concurred that the RO “co-opting” the RS recommendation did not violate any PES Manual policy. The Board also found the contention that the RS used the RO to “carefully craft the fitness report as not to make it adverse but with enough negative connotations” to be without merit. Further, the Board noted your contention the RO retaliated against you due to a purported Inspector General (IG) complaint. Without any evidence regarding the IG complaint, the Board derived from your statement that you contend the RO committed reprisal against you by refusing to discuss the contested fitness report with you or assist you with your request for modification. The Board substantially concurred with the AO and concluded your contention lacks merit because there is no PES Manual requirement for a reporting official to “relitigate” a performance evaluation with a Marine once the report has been accepted into the official record. Based on the available evidence, the Board concluded there is insufficient evidence of an error or injustice warranting modification or removal of the fitness report.

The Board further considered your contention the report ending on 30 June 2020 should be removed because it was not in compliance with the PES Manual. Specifically, you contend the RO did not provide any of the required Section K comments regarding professional military education, promotion, and command, which reduced your competitiveness before a promotion/selection board.

The Board, however substantially concurred with the AO and PERB Decision that the 2020 report is valid as written and filed, in accordance with the applicable PES Manual guidance. Specifically, the Board determine the PES Manual does not constrain a reporting official to replicate the same commentary on subsequent performance evaluations nor does it constrain the RO to make an insincere and/or unfounded recommendation. The Board concluded the RO’s omission of these comments did not invalidate the fitness report. Additionally, the Board noted your petition omits any evidence to suggest error or injustice with the RS’s evaluation. Based on the available evidence, the Board concluded there is insufficient evidence of an error or injustice warranting removal of the fitness report.

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.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

11/22/2023

