



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. 7324-23
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 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 14 July 2023 decision by the Marine Corps Performance Evaluation Review Board (PERB), the 19 April 2023 Advisory Opinion (AO) provided to the PERB by the Manpower Management Division Performance Branch (MMRP-30. 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 January 2022 to 25 May 2022. The Board considered your contention that pursuant to MCO 1610.7A (PES Manual), there was no counseling, documented counseling, or notification of lower/sub-par performance to constitute a lower comparative assessment grade from the previous reporting period. The Board also considered your contention that the RO concurred with the RS while marking you in block "3" of the comparative assessment which you claim is a contradiction and not a fair, accurate, or just evaluation of your performance. The Board also noted your contention the fitness report occasion was directly caused by an injury sustained during pre-deployment training that ultimately required two shoulder surgeries which resulted in missing the deployment and being moved to the remain behind element (RBE).

The Board, however, substantially concurred with the AO that removal of the fitness report would constitute an excessive degree of redress and, by modifying the report to remove the impertinent language, the report is valid as written. In this regard, the Board noted the PERB

already modified the report by removing the Section K comment, “When engaged, he has all of the potential to be a top-tier performer.” The Board also determined your contention that the comparative assessment is a contradiction, not a fair, accurate, or just evaluation of your performance is a matter of opinion. Further, the Board noted the PES Manual does not preclude an RO from reducing a comparative assessment marking on a subsequent report, nor require any justification for doing so. Moreover, the Board noted the RO is not required to counsel a Marine Reported On (MRO) regarding comparative assessment marking, even if reduced from the preceding reporting occasion. Finally, the Board noted the contested report does not contain any suggestions that the reporting chain intended for the report to reflect adversely. Thus, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the fitness report in question. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief beyond that granted by the PERB.

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,

11/3/2023

