



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

██████████
Docket No. 8967-23
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 applications on 19 December 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 15 September 2023 decision by the Marine Corps Performance Evaluation Review Board (PERB), and the 19 July 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 15 September 2023, and although you were given 30 days in which to submit a response, you chose not to do so.

The Board carefully considered your request to remove your fitness report for the reporting period 7 January 2022 to 7 February 2022. The Board considered your contentions that the adverse fitness report is not justified and you have substantiating evidence that disproves the adversity. You contend that Section I incorrectly states "6105 counseling inputted into MROW's OMPF" because there is no record of a 6105 counseling entry, and that your commanding officer did not issue you a 6105 counseling. You further assert you have proof that you were within standards in accordance with the Marine Corps Order 6110.3A (Marine Corps Body Composition and Military Appearance Program). As evidence to support your contentions, you attached an excerpt of the Marine Corps Order, your Marine Corps Training Information Management System record, and the contested fitness report, which includes your rebuttal.

The Board, however substantially concurred with the AO and the PERB decision that, in accordance with the Performance Evaluation System (PES) Manual, the fitness report is

procedurally correct as written and filed. In this regard, the Board determined the RS adhered to PES Manual guidance when issuing the directed adverse fitness report due your failure to maintain Marine Corps height and weight standards during the reporting period. The Board further noted your rebuttal statements in response to the adverse nature, however determined that the Third Officer Sighter appropriately adjudicated the differences. Moreover, the Board concurred with the AO's conclusion that the omission of the 6105 does not necessarily invalidate the contested fitness report, especially when considering the fact that it is not marked as Derogatory Material on the fitness report. The Board thus concluded that your request is lacking in sufficient evidence of a probable material error, substantive inaccuracy, or injustice warranting removal of the fitness report.

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 review of cases with substantiated reprisal allegations where the Secretary of the Navy's follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with DoD policy you have the right to request review of the Secretary of the Navy's decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a *de novo* review and under 10 USC 1034(c) the Secretary of Defense 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, [REDACTED], [REDACTED], [REDACTED]. 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,

1/18/2024

