



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. 9301-23
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 16 January 2024. 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 17 October 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 17 October 2023. Although you were given an opportunity to submit a rebuttal, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully considered your request to modify your fitness report, for the reporting period 1 May 2021 to 2 October 2021, by removing the adverse marking. The Board considered your contention that Section I language does not reference any official derogatory material and, while the Page 11 you were issued meets the criteria for derogatory material per the Performance Evaluation System (PES) Manual, it occurred outside the reporting period and does not automatically constitute derogatory material on the next fitness report.

The Board, however, substantially concurred with the AO and the PERB decision that the fitness report was administratively and procedurally correct as written and filed, in accordance with the PES Manual. In this regard, the Board determined that the reporting senior (RS) adhered to PES Manual guidance when issuing you the adverse fitness report due to the final adjudication of your Report of Misconduct proceedings for inappropriate postings on social media. The Board further determined the RS provided you the appropriate attribute markings and Section I comments based on the adverse nature of the fitness report and his relevant assessment of your performance at the time, all which was concurred with by the Reviewing Officer and adjudicated by the Third Officer Sighter. The Board acknowledged that you were not subject to any disciplinary action or derogatory material during the reporting period and, in accordance with the PES Manual guidance, absent this, by default, the adverse nature of the fitness report constituted conduct-based adversity. Accordingly, the Board noted that the RS complied with the requirement to “not report pending matters” and only report conduct-based adversity “after the matter is fully adjudicated.” Thus, the Board concurred with the AO that the challenged fitness report is valid. The Board thus concluded that your request is lacking in sufficient evidence of probable material error, substantive inaccuracy, or injustice warranting modification of the fitness report in question. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

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,

2/13/2024

