



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

█  
Docket No. 9314-23  
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 5 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 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 furnished by the Marine Corps Performance Evaluation Review Board (PERB), and the 16 August 2023 advisory opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30). The AO was provided to you on 17 October 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 the fitness report for the reporting period 6 June 2021 to 21 December 2021. According to your statement, on 2 December 2021, you were charged with driving while intoxicated (DWI). On 10 November 2022 a █ Circuit Court judge ruled that you were not guilty for DWI, and convicted you of misdemeanor reckless driving (code 46.2-852/Reckless driving - Endanger life or limb) with no other charges. You also stated that your non-judicial punishment was held prior to the conviction for reckless driving and resulted in a punitive letter of reprimand. You contend that the adjudication process did not fully conclude until 13 March 2023, the fitness report goes against the Marine Corps Performance Evaluation System (PES) Manual and adjudication process. Specifically, the fitness report includes lowered Reporting Senior (RS) markings in 'Decision Making' and 'Judgment' in response solely to the DWI incident, prior to the adjudication proceedings, as well as lowered Reviewing Officer markings inconsistent with your performance. You also contend

that the RS shifted you out of your billet and waited until August 2022 to write the fitness report after two other reporting periods and after the non-judicial punishment. You claim that the lowered markings were never addressed with you as being tied to any other performance or conduct outside of the DWI incident, which was not to be included in the reporting period. You also claim that you were not supplied with a copy of the fitness report, you requested three times to speak to the RS, he stated he would get to it at a later date, and the discussion never took place. As evidence, you provided the 10 November 2022 civil court document.

The Board, however substantially concurred with the AO and PERB's decision that your fitness report is valid as written and filed, in accordance with the applicable PES Manual and "adjudication process". In this regard, the Board noted that you were cited for DWI on 2 December 2021. The Board also noted that on the date of the DWI you were assigned as the commanding officer; █ at the █. The Board noted, too, that your fitness report was not adverse, nor did your reporting officials include comments regarding your DWI. The Board determined that your commanding officer had the authority to shift you out of your leadership billet pending adjudication of your misconduct. Moreover, the PES Manual does not preclude the reporting chain from considering the circumstances related to pending matters. The Board also determined that your contentions regarding lowered marks are speculative and not supported by any evidence. The RS had the discretionary authority to evaluate you based on his observation of your performance and conduct, and the Board found no evidence that your performance and conduct warranted higher marks than you received. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action. 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,

12/7/2023

█

Deputy Director

Signed by: █