



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. 9315-23
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 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 18 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 22 December 2021 to 31 May 2022. 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. You also contend that the fitness report was not completed for several months. You claim that the fitness report is a result of your billet and duties being restricted immediately following the DWI that had not yet been adjudicated or any non-judicial punishment imposed. You also claim that you were

restricted from being in an instructor capacity and placed in a temporary made-up position, which limited you from being competitive when assessed against your peers in the command.

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 assigned to the instructor staff during the reporting period. The Board also noted your billet description and billet accomplishments; the Board determined that your billet description contains concise and essential elements of your billet. In addition, your billet accomplishments appear to highlight significant accomplishments. The Board noted, too, that your fitness report is not adverse, contains favorable attribute marks, comparative assessment, and comments. The Board determined that the commanding officer has the discretionary authority to assign Marines based on the needs of the command, thus, there was no requirement to place you in an instructor capacity. The Board also determined that your contentions regarding limitations on your competitiveness when assessed against your peers are speculative and not supported by evidence. Moreover, the Board found no evidence that your performance and conduct warranted higher marks than you received and you provided none. The Board 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

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Deputy Director

Signed by: █