



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

█  
Docket No. 9318-23  
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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application 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 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 18 August 2023 Advisory Opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30). Although you were afforded an opportunity to submit a rebuttal, you did not do so.

The Board determined that a personal appearance with or without counsel will 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 remove your fitness report for the reporting period 1 November 2010 to 25 February 2011. The Board considered your contentions that due to your Reporting Senior's (RS's) bias against you, the fitness report contains substantive inaccuracies and was an unjust appraisal of your performance and potential. Additionally, you contend you were given little guidance or direction, which resulted in an unfair evaluation. You also contend you received a negative written counseling 18 days prior to the end of the reporting

period and that it gave you no concrete steps that you could take to improve. The Board also considered your many examples of an unfavorable command climate and advocacy letters.

The Board, however substantially concurred with the AO and the PERB decision that the fitness report is valid as written and filed, in accordance with the applicable Performance Evaluation System (PES) Manual guidance. In this regard, the Board noted your contentions are based on subjective matters of opinion and judgement in lieu of objective matters of record. Additionally, the Board noted relief is not granted on an alleged lack of counsel, as counsel takes many forms. Regardless, the Board noted this contention is contradicted by the Section I comments which state you were “formally and informally (written and verbal) counseled on multiple occasions regarding [your] leadership, lack of ability to set the example, developmental responsibilities to [your] subordinates, appearance, attitude, and initiative.” The AO noted and the Board agreed, you were afforded the opportunity to rebut the contested fitness report and availed yourself to the opportunity, however you omitted any factual differences. The Board thus concluded that your request is lacking in substantial evidence of error or injustice of this fitness report established in 2011.

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,

1/19/2024

