



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. 9366-23
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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 14 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 21 July 2023 Advisory Opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30). Although you were afforded the 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 2 February 2018 to 24 July 2018. You contend the derogatory material which formed the basis of adversity in the fitness report was not supported by the preponderance of the evidence. Further, you contend that a Board of Inquiry (BOI) found that the evidence did not support any of the allegations which formed the basis of the Administrative Remarks (Page 11) entry and the Report of Misconduct. Based on the BOI's determination, you contend the fitness report should be removed because there is no basis for adversity.

The Board, however, substantially concurred with the AO and the PERB decision the fitness report is valid as written and filed, in accordance with the applicable Performance Evaluation System Manual guidance. In this regard, the Board noted that you were notified on 23 January 2020 that your BOI case had been closed, and that "[a]dverse material concerning this matter

will be included in your Official Military Personnel File [OMPF]” meaning that, despite the BOI’s findings regarding its recommendation that you be retained, the adverse material would remain a permanent part of your official record. The Board also concurred with the AO’s discussion that despite later findings of the BOI, the command and your reporting officials determined your actions constituted disorderly conduct in violation of Article 134 of the Uniform Code of Military Justice. Based on the command’s substantiation of your misconduct, you were subject to a Report of Misconduct and a negative Page 11 counseling entry, both of which are resident in your OMPF, and remain as valid bases for the adversity of the contested fitness report. Based on the available evidence, the Board concluded there is insufficient evidence of an error or injustice warranting removal of the contested fitness report.

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,

1/11/2024

