



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

█
Docket No. 9537-23
Ref: Signature Date

█
█
█
Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 23 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 18 December 2023 Advisory Opinion (AO) provided by the Headquarters Marine Corps (MMPB-24). The AO was provided to you on 21 December 2023, and you provided a response.

The Board carefully considered your request to remove your Failures of Selection (FOSs) for Fiscal Year (FY) 2022 through 2025 to the grade of lieutenant colonel (LtCol). The Board considered your contention that the fitness report for the reporting period 25 February 2017 to 31 May 2017 contained a significant material error, that was present during each promotion selection board (PSB) which you claim made you less competitive. The Board also considered your claim that since your first FOS in FY 2022, your Reporting Seniors (RS) have told you that you have performed well, but since you had already been passed for promotion they would automatically grade you as the 80 or give you an extremely low fitness report to give others a better chance at promotion not in accordance with the Performance Evaluation System (PES) Manual.

The Board, however, substantially concurred with the AO. In this regard, the AO noted that if the contested fitness report had been corrected prior to the convening of the FY 2022 LtCol PSB, you still would have struggled to receive a promotion recommendation for selection from the majority of the PSB members. Further, the AO notes that your official record contains a significant non-competitive report that was present at the time of the FY 2022 LtCol PSB which

had the appearance of performance regression from a reviewing officer with a robust profile for the fitness report prior to the convening of the FY 2022 LtCol PSB.

In your response to the AO, you contend that the Headquarters, Marine Corps recommendation is unjust. Specifically, you claim that the thought process is based on conjecture, opinion, or conclusion formed on the basis of incomplete information. Further, you assert that conjecture should not be utilized when deciding whether a promotion board may or may not have promoted an individual and that instead facts should be utilized. Furthermore, you assert that the AO is not in place to serve as a one-man promotion board, which seems that Headquarters, Marine Corps is attempting to do in your case. You also indicate that in addition to the corrected fitness report, the fitness report mentioned in the AO, is currently under PERB review.

However, the Board determined that, although Headquarters, Marine Corps modified the contested report, you provided insufficient evidence to provide a nexus between the contested report and your FOSs. In this regard, the Board noted in addition to the fitness report mentioned in the AO, your record contained significant non-competitive material which would have been taken into consideration by each PSB. Accordingly, the Board was not persuaded that the contested report caused your FOSs. Thus, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of your FOSs. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. 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

