



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. 461-24
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 30 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.

Regarding your request for a personal appearance, 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 17 June 2021 and 17 August 2021 Administrative Remarks 6105 (page 11) entries. You also request to remove your "derogatory" fitness report (unspecified). You stated that prior to the Fiscal Year (FY) 2023 Staff Sergeant (SSgt/E-6) selection board you requested to have negative material associated with your administrative separation (ADSEP) board removed. The Board considered your contention that you were passed over for promotion due to a fitness report, which stated, ". . . tour on recruiting duty was cut short due to his relief for cause". You also contend the derogatory evaluation is invalid due to the board unanimously finding you not guilty of the alleged offenses and voting for your retention. In addition, the fitness report "mention is not justifiable due to the lack of supporting documentation." You claim that the issue has continued to affect your career progression "due to the nature of the documents being invalid post board results."

The Board substantially concurred with the previous Board's decision that your counseling entries for engaging in an inappropriate relationship with a member of the Delayed Entry Program are valid. The Board also concurred with the previous Board's determination that the findings during your ADSEP proceedings had no bearing on your commanding officer's authority to issue your counseling entries. The convening of an ADSEP board is a separate administrative process with the specific function of determining a service member's suitability to remain on active duty. Moreover, ADSEP boards do not determine guilt or innocence. 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.

Concerning your request to remove your fitness report, the Board determined that you have not exhausted your administrative remedies. In accordance with the Marine Corps Performance Evaluation System Manual, the Performance Evaluation Review Board (PERB) is the initial agency for fitness report appeals; therefore, you must submit your request to the PERB prior to this Board taking any action on your request.

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.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

2/14/2024

