



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

[REDACTED]
Docket No: 5442-16

NOV 14 2017

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
[REDACTED] USMC

Ref: (a) 10 U.S.C. §1552
(B) MCO P1610.7F

Encl: (1) DD Form 149
(2) FITREP for the reporting period 7 Feb 14 to 25 Apr 14
(3) FITREP for the reporting period 26 Apr 14 to 19 Jun 14
(4) CMC ltr 1610 MMRP-13/PERB of 10 Jun16
(5) HQMC memo 1610 MMRP-13/PERB of 10 Jun16

1. Pursuant to the provisions of reference (a), Petitioner, a commissioned officer in the Marine Corps, filed enclosure (1) with this Board requesting two of his fitness reports (FITREP) at enclosures (2) and (3) be changed from "observed" to "not observed."
2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 28 July 2017, and pursuant to its regulations, determined that pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of the naval records and applicable statutes, regulations and policies. The advisory opinion provided in enclosure (5) was sent to the Petitioner on 10 June 2016 for an opportunity to comment prior to being considered by the Board. After the 30 day period for comment expired without a response, the case was presented to the Board.
3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:
 - a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.
 - b. Petitioner was issued a From Duty FITREP (FD FITREP) for the reporting period 7 February 2014 to 25 April 2014 (enclosure (2)). Petitioner contended that the FITREP occurred in an academic environment and a significant and fair assessment of his performance was not feasible. Having reviewed all the facts regarding Petitioner's allegations of error and injustice, the Marine Corps Performance Evaluation Review Board (PERB) did not remove or modify the Reporting Senior's (RS) marks and comments, and those sections of the FD FITREP

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remain observed. However, as shown in enclosure (4), the PERB modified this FITREP Section A, Item 3.c. (Type) from "N" (normal peacetime reporting) to "A" (academic and training duty). The PERB also made the Reviewing Officer's (RO) evaluation not observed by changing Section K from "Sufficient" to "Insufficient," and by removing all other marks and comments made by the RO in Section K.2., K.3., and K.4.

c. Petitioner was issued a successive Change of Reporting Senior FITREP (CH FITREP) for the reporting period 26 April 2014 to 19 June 2014 (enclosure (3)). Petitioner again contended that there was insufficient observation time during the reporting period to provide a fair assessment of his performance, and that other in-theater majors receiving a CH FITREP by the same RS had been observed for 9 months, but he had only been observed for six weeks. The AO recommended that Petitioner's request be denied. The AO opined that Petitioner failed to substantiate how the Section I comments are not significant and fair. Further, although the RS did fail to indicate in Section I that he was invoking the exception to policy in submitting an observed report with under 90 days of observation time, but it is an administrative error and does not warrant modification of the report.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants partial relief. In this regard, the Board noted that the PERB modified the FD FITREP by changing Section A, Item 3.c. (Type) from "N" (normal peacetime reporting) to "A" (academic and training duty). The PERB also changed Section K.1. (Observation) of this FITREP from "Sufficient" to "Insufficient," and removed all other marks and comments made by the RO in Section K.2., K.3., and K.4. However, the Board determined that leaving the FITREP as "observed" by the RS is inappropriate and further modifications to make the entire FITREP "not observed" is warranted. The Board did not believe that the RS could have had sufficient observation of Petitioner while the Petitioner was in an academic setting, and the RS comments do not reflect adequate justification to issue an observed FITREP. Not only does the RS fail to address why it is appropriate to rate Petitioner, Section I indicates that the assessment is based on others vice personal observation. Based on the totality of circumstances, it is manifestly unjust for the FD FITREP to remain as is in Petitioner's OMPF, and it should be modified to an entirely "not observed" report.

With regard to the CH FITREP, the Board significantly concurred with the AO that, although the RS did not comment on why he was invoking an exception to policy in submitting an observed report with under 90 days of observation time, it is a valid report, and the Petitioner did not substantiate that it is not a fair and impartial evaluation of his performance during the reporting period.

RECOMMENDATION:

In view of the foregoing, the Board finds the existence of an error and injustice warranting the following corrective action.

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Petitioner's FITREP for the reporting period 7 February 2014 to 25 April 2014 (enclosure (2)) be modified to reflect a completely "not observed" report by both the RS and the RO.

No further relief be granted.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

[REDACTED]
Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

[REDACTED]
Executive Director