



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. 7250-23
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 March 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 14 July 2023, decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), the 11 April 2023 advisory opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30), and the 1 February 2024, AO furnished by the Licensed Clinical Psychologist. The AOs were provided to you on 14 July 2023 and 2 February 2024 respectively, and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

The Board carefully considered your request to remove your fitness report for the reporting period 12 November 2014 to 2 March 2015. You also request remedial promotion to Gunnery Sergeant (GySgt/E-7). The Board considered your contention that relief is warranted due to distinctive and significant signs of bullying, personal, and racial bias by leadership and reporting officials graded you as such. This is evident by the inaccurate markings, numerous mistakes, and verbiage that is confusing and full of ambiguities. You also contend there has been a trend of discrepancies on numerous fitness reports where performance marks do not match the tone and context of Section I comments, bringing to mind indicators of injustice and violations of the Marine Corps Performance Evaluation System (PES) Manual and the Marine Corps Prohibited Activities and Conduct Prevention Response (PAC) Manual.

You further contend the fitness report was not marked commendatory despite commendatory conduct mentioned in Section I; the verbiage does not match the attribute marks or the Reviewing Officer's (RO's) comparative assessment mark. Additionally, the fitness report was used as a counseling and disciplinary tool. The RO comment "demonstrates tremendous potential for continued professional development" is a velvet dagger and the comparative assessment mark is based on personal and racial bias. You claim that along with receiving numerous inaccurate fitness reports that held you back from reaching your true potential in the Marine Corps (promotion to higher ranks), the trend of being treated unfairly and being held back, led you to having a medical incident. You also claim the incident would have been prevented if the injustice did not happen, especially when you do not have any adverse paperwork. You respectfully request this correction so you can have a fair chance to be looked at and to be selected for promotion. As evidence, you provided correspondence from a Behavioral Health Therapist and your former Avionics Chief.

The Board, however, substantially concurred with the PERB's decision that your fitness report is valid as written and filed in accordance with the applicable PES Manual. In this regard, the Board noted the Section I comments regarding your time as a volunteer and participant in the 5k run. According to the PES Manual, commendatory material is defined as the presentation of a personal military decoration, Certificate of Commendation, or miscellaneous commendatory correspondence for an individual achievement. The Board determined that volunteer activities do not constitute commendatory material. The Board also determined that the PES Manual does not provide a matrix to match attribute marks with Section I comments nor is there a requirement to match RO comments with the comparative assessment mark. Moreover, the Board found no evidence of bullying, personal or racial bias in the preparation of your fitness report. Nor is there evidence that your fitness report was used as a counseling or disciplinary tool.

Concerning your contentions regarding PAC Manual violations, the Board determined there is insufficient evidence that your reporting officials committed PAC violations. The Board found no evidence that you filed an Inspector General Complaint, Request Mast or availed yourself of any other means to report the purported bullying, personal, and racial bias. The Board noted the character statement you provided was based upon observations that began in 2019. The Board determined the correspondence lacked any knowledge or direct observation of the circumstances during the contested reported period.

Concerning your claims of Post Traumatic Stress Disorder (PTSD) and Other Mental Health, the Board considered the AO. The AO stated in pertinent part:

There is no evidence of a diagnosis of PTSD. There is evidence of diagnoses of mental health conditions, including Adjustment Disorder, Depression, and Personality Disorder. Unfortunately, available records are not sufficiently detailed to establish a nexus with his performance on his FitRep ratings, as the periods evaluated in the FitRep occurred prior to his extended period of diagnosis and treatment.

The AO concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD. There is evidence of mental health conditions that may be attributed to military service (Adjustment Disorder and Depression). There is insufficient evidence to attribute his performance as rated in the disputed FitReps to a mental health condition."

The Board concurred with the AO furnished by the Licensed Clinical Psychologist that there is no evidence of a diagnosis of PTSD and there is insufficient evidence to attribute the evaluation of your performance and conduct to a mental health condition. As explained in the AO, the reporting period occurred prior to your mental health diagnoses and treatment. You were referred for a mental health evaluation during 2018 after a pre-deployment screening due to pending overseas orders. Although you expressed having difficulty in your unit, there was no indication of bullying, personal or racial bias. The Board also noted the correspondence from the Behavioral Health Therapist; however, the Board determined there is insufficient evidence that your mental health conditions were caused by bully or bias.

As a result, the Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the fitness report in question or your remedial promotion. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

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,

4/4/2024

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Executive Director

Signed by: █