



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. 9386-23
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.

A three-member panel of the Board, sitting in executive session, considered your applications on 16 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 13 October 2023 decision by the Marine Corps Performance Evaluation Review Board (PERB), and the 14 June 2023 Advisory Opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30). The PERB decision and the AO were provided to you on 13 October 2023 and, although you were given 30 days in which to submit a response, you chose not to do so.

The Board carefully considered your request to modify the fitness report for the reporting period 3 June 2021 to 30 April 2022, by changing Section H.1 mark from 'D' to 'E' and removing the reviewing officer's (RO) comparative assessment and Section K comments. The Board considered your contentions that Section H.1 was inadvertently marked and the RO's comments and comparative assessment were not in accordance with MARADMIN 464/22 – Interim Guidance Regarding Marines Requesting Religious Accommodation from COVID-19 Vaccination Requirements. You believe the language implies that the RO was considering your vaccination status when completing the fitness report based on remarks he made during a meeting you had with him. You assert that despite your effort to have him confirm or deny the accuracy of your characterization in his comments, based on the email traffic you submitted, it is noteworthy that he does not deny that he made them.

The Board substantially concurred with the AO and the PERB decision that the fitness report is not valid as written, in accordance with the applicable Marine Corps Performance Evaluation System (PES) Manual. In this regard, the Board noted PERB's modification of your fitness report and determined that the corrective action taken was sufficient. The Board also concurred with the AO that the RO's comments were in line with the PEB Manual and are valid as stated. The Board thus concluded that your request is lacking in sufficient evidence of a probable material error, substantive inaccuracy, or injustice warranting additional modification of the fitness report, as amended. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

The Board also noted you checked the "Reprisal/Whistleblower" box on your application. The Board determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC 1034. 10 USC 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy's follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with DoD policy you have the right to request review of the Secretary of the Navy's decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a de novo review and under 10 USC 1034(c) the Secretary of Defense cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Office of Legal Policy, [REDACTED]. Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and, a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the BCNR, therefore, please also include previously presented documentation that supports your statements.

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

