



**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. 10536-23  
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 13 February 2023, decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), the 13 October 2022 advisory opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30), the 20 December 2023 AO furnished by (MMPB-24), and your response to the PERB AO. The MMPB-24 AO was provided to you on 6 February 2024, 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 determined that your personal appearance, with or without counsel, would 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 modify the fitness report for the reporting period 1 June 2021 to 25 March 2022 by removing any adversity from the report. You also request to remove your failures of selection and a Special Selection Board (SSB). The Board considered your contention that the fitness report does not comply with the Marine Corps Body Composition and Military Appearance Program (BCP/MAP) order and was used as a counseling tool. You also contend the fitness report was used as reprisal in response to an Article 138 Complaint of Wrongs

against the Battalion Commander for abuse in December 2021. You claim the investigation was closed in March 2022 because the Commanding General did not concur with your complaint or evidence. As evidence and in response to the PERB AO, you provided correspondence from the Battalion Medical Officer.

The Board noted that your Reporting Senior (RS) directed you to conduct an official weigh-in prior to the ending date of the reporting period. The RS supervised the weigh-in and determined it was conducted in accordance with the BCP/MAP order. The results of the weigh-in documented your body fat at 23 percent. The RS documented the weigh-in results in the fitness report and noted that your body fat was not within Marine Corps standards. In accordance with the Marine Corps Performance Evaluation System (PES) Manual, your fitness report was rendered adverse. In response to the report's adversity, you accepted responsibility for being over your body fat percentage on the day of the weigh-in and you were in standards less than four days later. You expressed concern that the BCP/MAP order was not adhered to and was used as an attempt to introduce adversity into your report. The Third Officer Sigher adjudicated the factual differences and concurred with the adversity of the report. The Third Officer Sigher determined that you were conflating a formal assignment to and process of the BCP/MAP with the RS's and RO's discretion to find adversity in your performance and documenting it via an appropriately occasioned fitness report.

The Board 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, according to the PES Manual, "If the body fat percentage reported is greater than the maximum allowed for the MRO's age group . . . the report is adverse." The Board noted your acknowledgment that you were out of Marine Corps standards at the weigh-in. The Board also noted that the weigh-in occurred on the last date of the reporting period. Therefore, the fact that you were not within Marine Corps standards at the end of the reporting period is indisputable and your reporting officials properly documented this fact in the contested fitness report. The Board determined that your reliance upon the BCP/MAP order is misguided. The Board concurred with Third Officer Sigher's determination that you are conflating a formal assignment to the BCP with the PES Manual requirement. The PES Manual does not require formal assignment or processing to the BCP to render a fitness report adverse. The Board considered the correspondence from your Battalion Medical Officer; however, the Board found the correspondence insufficient to conclude that your diagnosis caused you to exceed weight standards. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting modification of the fitness report in question, removal of your failures of selection, or an SSB. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You also indicate in your application that you are the victim of reprisal. The Board, however, determined that there was insufficient evidence to conclude that your fitness report was rendered adverse as reprisal in violation of 10 U.S.C Section 1034. In making this determination, the Board noted your claim that you filed an Article 138 Complaint of Wrongs. The Board found no evidence, other than your statement, that your fitness report was issued as a reprisal action.

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, 4000 Defense Pentagon, Washington, DC 20301-4000. 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,

4/5/2024

