



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. 1650-24
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 4 June 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 applications, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies.

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 remove the 11 February 2022 Administrative Remarks 6105 (page 11) counseling entry and associated rebuttal statement. The Board considered your personal statement as well as your contention that the previous Board's Decision Document contained significant discrepancies; which you claim, indicates confusion regarding the specific issues previously raised. You further assert the requested relief should be granted based upon the Marine Corps Performance Evaluation Review Board (PERB) decision to remove the fitness report the period ending 18 February 2022 and your Commanding Officer's (CO) decision to rescind his request to revoke your Air Traffic Control (ATC) certificate and Military Occupational Specialty (MOS). Finally, you assert the context of the Command Investigation (CI) does not match the content of the counseling entry.

As part of your previous application to this Board, the Board considered the advisory opinion (AO) provided by Headquarters, Marine Corps (JPL) and concluded that the omitted enclosures to your rebuttal statement should be inserted into your official record. However, the Board determined the evidence you provided was insufficient to demonstrate an error or injustice warranting removal of the counseling entry. After careful reconsideration of your application and review of the entire record, the Board substantially concurred with the previous Board's decision that your counseling entry is valid as written and filed. In this regard, the Board considered your contention the prior Board's Decision Letter contained significant discrepancies

and concluded that any purported discrepancies are administrative in nature and had no bearing on the Board's decision to deny your request relief.

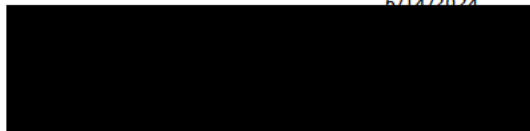
Concerning your claim that the counseling entry should be removed based upon the PERB's decision to remove your fitness report, as well as your CO's decision to rescind his recommendation to revoke your ATC credentials and MOS, the Board noted that the PERB's decision to remove the fitness report ending on 18 February 2022 does not invalidate the counseling entry. Further, the Board noted that the counseling entry makes no mention of the CI; thus, the Board determined you provided insufficient evidence the counseling entry was issued on the basis of the CI. Rather, the Board concluded the counseling entry was the culmination of multiple incidents of substandard performance that occurred over the course of your assignment, which ultimately led to the CO's decision to relieve you of your duties in the ATC Section and to document your deficiencies. Therefore, the Board concluded the PERB's decision to remove the fitness report, as well as your CO's decision not to pursue revocation of your MOS credentials, has no bearing on the validity of the counseling entry. Moreover, the Board concluded your CO acted within his/her discretionary authority when determining that your substandard performance/misconduct was a matter essential to record; as it was his/her right to do.

Finally, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Contrary to your contention, based on the aforementioned findings, the Board found that the presumption of regularity applies in your case and determined your evidence insufficient to overcome this presumption. As a result, the Board 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.

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,

6/11/2024



Executive Director
Signed by: 