



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. 3432-24
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.

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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 16 May 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 18 March 2024 decision by the Marine Corps Performance Evaluation Review Board (PERB) and the 27 November 2023 Advisory Opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30).

The Board carefully considered your request to remove the transfer fitness report for the reporting period 26 March 2019 to 26 June 2019 in order to “uphold the tenets of fair and just performance appraisals per the guidance associated with observed reporting occasions provided in the Performance Evaluation System (PES)” Manual. You contend the report should be removed because your performance was only “observed” 73 days when one subtracts your 19 days of “non-availability” due to permissive temporary additional duty (PTAD), annual leave, and travel/proceed days. You further contend several comments by the Reporting Senior (RS) in Section I “arguably are not within the spirit” of the PES Manual. Additionally, you contend the Reviewing Officer (RO) made comments that “can be subjectively interpreted as justification for the report’s markings on both RS and RO profiles.” You also contend removal is warranted because you did not receive initial counseling from the RS regarding your billet nor did you receive periodic counseling, written or verbal, from either the RS or RO so you were “unaware of [your] shortcomings and afforded no opportunities to improve performance.” Additionally, you

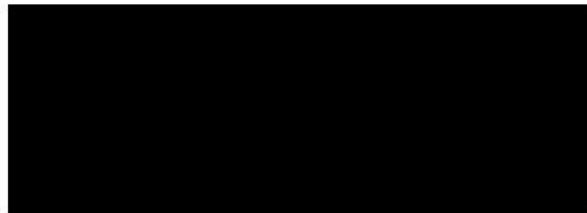
contend you did not personally interact with the RO until 19 June 2019, your “final observed workday at the command before starting annual leave, travel, and proceed to [your] next duty station.” Lastly, you contend your fitness report does not list that you served simultaneously as both the [REDACTED] Executive Officer and the [REDACTED] Company Commander “[d]uring the 73 days of observed time.”

The Board, however, substantially concurred with the AO and the PERB decision the report is valid as written and filed, in accordance with the applicable PES Manual guidance. The Board noted the PES Manual defines periods of non-availability as “periods of 30 or more consecutive days when the MRO or RS was not available to perform his duties at the reporting command.” By this definition, the Board noted your 19 days of PTAD, annual leave, and travel/proceed do not constitute “non-availability.” The Board further noted you did not specify how the lack of counseling impeded your ability to perform your assigned tasks and substantially concurred with the AO’s discussion of counseling. The Board also substantially concurred with the AO’s discussion of the RS and RO comments and determined the comments were not inconsistent with the “spirit” of the PES Manual. Based on the available evidence, the Board concluded there is insufficient evidence of an error or injustice warranting removal of the contested fitness report.

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,

6/4/2024

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