



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. 5914-24
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 30 July 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 May 2024 decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), 19 March 2024 advisory opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMPB-23), and your response to the AO.

The Board carefully considered your request to remove the fitness report for the reporting period 1 June 2015 to 20 August 2015. The Board considered your contention that the fitness report was an observed report with less than 89 days of observation. You also contend the Reporting Senior (RS) did not justify or detail any significant events, which led to an increase in quality or quantity of observation. In your rebuttal to the AO, you referenced the Marine Corps Performance Evaluation System (PES) Manual, dated 5 June 2023. You assert that given the duration of the report and the nature of your interactions with the RS, you do not believe his observations merited any meaningful personal contact that was not normally obtainable in a standard work setting.

The Board, however, substantially concurred with the PERB's decision that you did not meet the burden of proof nor shown by preponderance of evidence a substantive inaccuracy or injustice warranting removal of your fitness report. The Board determined that your "From Temporary Duty" (FD) fitness report is valid as written and filed in accordance with the applicable PES Manual. The Board also determined that your reliance upon the PES Manual published after your fitness report was written is misguided. In this regard, the Board noted that the applicable PES Manual required the RS to submit an observed fitness report for FD occasions. According to the PES Manual, dated 13 February 2015, "Due to the significance of temporary duty assignments, the RS must submit an observed report, unless the temporary assignment is an academic environment, or an observed evaluation is not feasible. The RS must explain in section I why an FD report is not-observed." Although your RS was not required to justify the basis for an observed FD report, his section I comment, "This is an observed report due to close, meaningful observation of the MRO," would have been sufficient for an observed report. The Board thus concluded there is no probable material error, substantive inaccuracy, or injustice warranting removal of your fitness report. 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,

8/13/2024

