



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. 6114-24
Docket No. 6116-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your applications 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 applications, 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 applications have been denied.

A three-member panel of the Board, sitting in executive session, considered your applications on 20 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, as well as the 13 May 2024 decisions by the Marine Corps Performance Evaluation Review Board (PERB), the 4 April 2024 and 29 March 2024 Advisory Opinions (AOs) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30) and Performance Evaluation Section (MMPB-23), respectively.

NR20240006114

The Board carefully considered your request to modify or remove the Transfer (TR) fitness report for the reporting period 21 May 2021 to 31 August 2021. You contend the contested report is in error and/or unjust due to multiple violations of the Performance Evaluation System (PES) Manual. Specifically, you contend “very little thought was placed into writing the fitness report” which resulted in numerous administrative and procedural errors: 1) Report occasion should have been “From Duty” vice TR; 2) Unit description is incorrect; 3) Your name was spelled incorrectly by the Reviewing Officer (RO)¹. Further, you contend the reporting period, which is 102 days, only had 80 days of observation time, if one counts weekends, or 49 days observed time if one only counts normal workdays and not weekends. Additionally, you contend the Reporting Senior (RS) erred by

¹ The MMRP-30 AO states these are administrative corrections which do not require PERB action and may be remedied by submission of an appendix (G) submission to Headquarters Marine Corps FITREP Policy, Compliance, and Corrections. As such, the Board did not consider these stated administrative errors.

not listing your periods of non-availability in his Section I comments but instead he wrote comments “with intent not to accurately document [your] performance” and to “damage [your] reputation without explanation.” You also contend the report -- which is skewed, written as a “welcome aboard” report, and contains comments which “conflict with and obscure the remainder of the report” -- seems to be an attempt by the RS to justify “ranking [you] as low as possible for some reason, and not evaluating [you] based off [your] performance or attributes.” You further contend the RS, who was significantly inconsistent in his marking philosophy, and the RO, who marked you higher in the previous report, authored a fitness report “with an unjust bias against [you],” creating “an unusual and bizarre situation which constitutes an injustice within [your] record and fitness reports.” Lastly, you contend you “performed admirably” and “[n]ever once [were you] counseled, advised of a single performance concern.”

The Board, however, substantially concurred with the AO and the PERB decision that the report ending 31 August 2021 is valid as written and filed, in accordance with the applicable PES Manual guidance. In this regard, the Board noted your calculation of “observed days” is not consistent with the PES Manual. Specifically, non-availability calculations require consecutive days, and your claimed period of non-availability consists of, at most, six consecutive days. The Board, in its review of the contested report, did not find the report adverse, overtly suggestive of substandard performance, nor that it read as a “welcome aboard” report. Lastly, the Board noted you did not provide evidence or artifact illustrative of the RS’s grading philosophy nor did you provide sufficient evidence to support your “bias” claim.

NR20240006116

The Board carefully reconsidered your request regarding the Annual (AN) fitness report for the reporting period 12 April 2019 to 31 May 2020. In your current submission, you’ve modified your submission by requesting to remove, vice modify, the AN report for the “reasons previously mentioned in the initial petition².” Specifically, you contend the report is unjust due to bias and multiple violations of the PES Manual. Specifically, you contend the following:

1) The report is a “welcome aboard” report which violates the PES Manual by skewing your performance. Further, you contend the RS justified ranking you lower and did not evaluate you based on your performance and attributes.

2) The report violates the PES Manual’s requirement that grades be “earned by the MRO’s displayed effort and apparent results” rather than be “given to attain a perceived fitness report average or relative value.” You state that “clearly this report was written to give a low score which would constitute a below average report, with an attempt for it to appear as though an above average report.” You further contend you never received any negative counseling concerning your performance but only “accolades for [your] shop’s exceptional performance.” Also, you provided an email wherein the RS mentioned you were “top third, keep up the good work” but contend the RS’s report average, which is currently a 4.24, is much higher which makes this 3.79 report significantly below average per the RS’s marking philosophy. You also contend that “markings of many of the attributes are not accurate” and then specifically note only the “C” received for “Professional Military Education.”

² Points 1) through 6) reflect the contentions articulated in your initial request and the remainder of the points are derived from the current request.

3) The RS violated the PES Manual because his Section I comments are inconsistent with his markings. You specifically note the phrase “continue to groom for higher levels of responsibility” seems to have been “strategically placed to sway a promotion board to not select for promotion, without any actual justification.”

4) The PES Manual requires the RS to discuss his marking philosophy and comments with you prior to routing the report to the RO. Further, you contend that when you discussed the grading with the RS and inquired about his view of your performance, the RS mentioned “top third” with a numerical value of 96.88. You contend the markings and comments of both the RS and RO do not make sense and, after consulting with senior officers, revisiting your record, and doing additional research, you determined “this was wrong in every way and a significant injustice that needed to be corrected to accurately reflect [your] performance.”

5) The RS violated the PESMAN because a RS “must understand the significance of maintaining a consistent marking philosophy throughout [his] career.” The fact your performance was “said to be top third but on subsequent reports [your] performance is now well below his average, in line with the bottom third” shows a “significant inconsistency” in the RS’s marking philosophy.

6) The RO graded you a block lower in this report than on “the” previous report although the PES Manual requires a RO to assess back-to-back reporting periods, when performance remains constant, with at least the same mark. You further contend the RO never clearly explained his grading philosophy because your performance did not change for the worse, “if anything, it had improved.” Additionally, you contend you were marked low on this report due to bias. In support of your contention, you submitted a personal statement which provided a detailed background discussion, an affidavit written by a former Commanding Officer’s wife, email correspondence, and an advocacy letter written by a Lieutenant Colonel (LtCol) to the Senior Member of a Board of Inquiry.

7) Prior to the reporting period, you were urged by senior Judge Advocate General (JAG) officials to submit an Inspector General (IG) complaint regarding the former ██████ Executive Officer (XO) misconduct and abuses of power. You further contend “[you were] then told that the IG complaint seriously frustrated the command” and specifically the Commanding Officer (CO)/RO who was a close friend to the prior XO. Additionally, you contend he “lowered [your] grading and ensured comments in Section I would not reflect [your] performance but his frustration toward [you]. Bottom line, you contend the report was written in retaliation against you for filing the IG complaint. In support of your contentions, you attached a copy of the complaint you submitted³.

8) The reporting chain should have been modified due to the known bias. You contend the RS attempted to avoid routing the report through the CO, as the normal routing would be, and submitted copies of email correspondence between yourself and the RS in support of this contention. You contend the emails confirm that the RS “understood that routing [your] fitness report to the ██████ CO would result in poor markings due to bias.” However, after you questioned the routing, the RS maintained the normal routing.

³ In its AO, MMPB-23 stated “[t]his IGMC complaint form is a copy of the submission by the Applicant to IGMC and lacks validation from IGMC or another objective party thus limiting its effectiveness in bolstering the Applicant’s petition.” In preparation of your case for presentation to the Board, the Examiner confirmed submission of the complaint to IGMC on 7 June 2019.

9) For over a year, you performed admirably in your role as MAG-31 Director of Safety and Standardization (DoSS), which was “technically” a Lieutenant Colonel billet. You were never counseled but instead were “advised that [you were] doing an outstanding job and [were] the best DoSS that they had ever seen across multiple different [REDACTED] Further, you contend you “took an undermanned shop of inexperienced Marines, sailors, and civilians and trained and mentored them which resulted in exception results.” Lastly, you contend your “mission accomplishment, individual character, leadership, and intellect and wisdom were of the highest standard.”

The Board, however, substantially concurred with the AO and the PERB decision that the report ending 31 May 2020 is valid as written and filed, in accordance with the applicable PES Manual guidance. The Board concurred that the contended “drops in performance” as recorded by the RO across separate reports where you served in two distinctly different billet and commands do not constitute adversity nor require mandatory, directed, or additional comments by the RO to justify. The Board, having confirmed you submitted an IG complaint, determined evidence of the filing does not equate to evidence of bias. Further, the Board, in its careful review of the contested report, did not note any hint of adversity nor see any evidence of bias. Applying the required presumption of regularity, the Board determined that despite your additional information, specifically the copy of the IG complaint, the evidence remains insufficient to overcome the presumption or to establish retaliation or bias on the part of your CO/RO.

Conclusion

Based on the available evidence, the Board concluded there is insufficient evidence of an error or injustice warranting the relief requested for the contested fitness reports.

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,

7/3/2024

