



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. 6269-24
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 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), and 29 March 2024 advisory opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMPB-23). Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will 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 fitness report for the reporting period 16 January 2021 to 8 May 2021. If favorable, you request to remove your failures of selection. The Board considered your contention that the fitness report is inaccurate and does not comply with the Marine Corps Performance Evaluation System (PES) Manual. Specifically, the attribute markings are inaccurate, the Report of Misconduct (ROM) was unsubstantiated, and the Reporting Senior (RS) comments are inaccurate. You note that the Commanding General, █, █ submitted a ROM for repeated verbal comments, gestures, gazes of a sexual nature, and for providing a statement to an investigating officer. You also

contend the ROM was premature according to the Legal Support and Administration Manual (LSAM), the ROM was referenced as the basis of the fitness report for adversity, and the RS marked the fitness report adverse but no attributes were marked adverse. You assert that the comments should only reflect the nature of the conduct that was substantiated and not the allegations that were unsubstantiated. You claim that you were never offered the opportunity to make a statement prior to, during, or after completion of the Command Investigation (CI) and being redeployed to your home station. You also claim that the ROM was submitted 17 months before your Board of Inquiry (BOI) convened and the BOI did not substantiate a violation of the Marine Corps Prohibited Activities and Conduct (PAC) order.

The Board noted that your fitness report was marked adverse for the receipt of “Derogatory Material” and the Reporting Senior (RS) included the Directed Comment, “MRO received a Report of Officer Misconduct and Substandard Performance by the █ for violations of MCO 5354.1E (PAC Order) for repeated verbal comments, gestures, and gazes of a sexual nature and for providing a statement to an investigating officer which he knew to be false. This report was prior to this reporting period and is included now in accordance with MCO 1610.7A (PES Manual).” The Board also noted that you acknowledged the adverse nature of the fitness report and indicated that you had no statement to make. The Board noted, too, that the Third Officer Sighter reviewed your fitness report, found no factual differences to adjudicate, and determined that the characterization of the fitness report stands.

The Board substantially concurred with the AO and PERB’s decision that your fitness report is valid as written and filed in accordance with the applicable PES Manual. In this regard, the Board noted that the PES Manual authorizes RSs discretionary authority when evaluating the performance and conduct and when assigning attribute marks. The Board found no evidence that your performance and conduct rated higher marks than you received and you provided none. Concerning the results of your BOI, the Board determined that a BOI is an administrative process separate and distinct from the submission of your ROM and fitness report. According to 10 U.S.C. section 1182, BOI’s are convened to receive evidence and make findings and recommendations as to whether an officer on active duty should be retained on active duty. The BOI’s findings are not binding on your CG, who had the discretionary authority to determine whether you committed the misconduct documented in the ROM. The Board also noted that your fitness report does not reference the BOI and properly documented misconduct, after the appropriate disciplinary authority completed the adjudication of your misconduct. The Board thus concluded there is no probable material error, substantive inaccuracy, or injustice warranting removal of your fitness report or failures of selection. 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

