



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

██████████  
Docket No. 6600-24  
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 23 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 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 decision by the Marine Corps Performance Evaluation Review Board (PERB), and the 10 April 2024 Advisory Opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMPB-23), as well as your response to the PERB's decision.

The Board carefully considered your request to modify Section K.1 Reviewing Officer (RO) portion of your Fitness Report for the reporting period 1 December 2021 to 23 May 2022 to reflect "Insufficient". The Board considered your contentions that the RO never observed your performance and that your only interaction was on 30 March 2022 when, acting in his capacity as the Chief of Staff (CoS), he debriefed you on the outcome of a Prohibited Activities and Conduct (PAC) complaint you filed against the Reporting Senior (RS). You further contend that the RO comments or assessment does not match the comments or assessment the RS claims he provided to the RO. Finally, you contend that when you discovered the RS would continue to evaluate your performance, you raised your concerns with the Equal Opportunity Advisor (EOA) who informed you that filing an Equal Opportunity claim would be considered a protected communication. In response to the PERB's decision, you further claim the PERB's decision is contrary to law, Department of Defense Policy, Secretary of the Navy and Marine Corps Policy, and Advisory Opinion. You also assert the RS and RO objectivity was compromised and that it was more likely than not the RS supplied you with one version of comments/recommendations

for the RO and supplied the RO with another vice the RO drafting new comments and recommendations despite any observation of your performance. Finally, you claim the RS used the RO as an instrument of his (RS) retaliation. You claim that relevant policies strictly preclude reporting officials from actions that affect or potentially affect a Service member's performance evaluation, when the service member makes a protected communication and that despite this prohibition, the RS remained in your reporting chain and was permitted to provide input on your performance as the RS and to influence the RO's evaluation of your performance.

The Board, however, substantially concurred with the PERB's Decision that the report is valid as written and filed, in accordance with the applicable Performance Evaluation System (PES) Manual guidance. In this regard, the Board determined your petition lacks evidence that supports a finding that the RS conspired to have the RO omit suggested comments. Furthermore, the Board noted the RO is under no obligation to incorporate suggested Section K comments. The Board also noted the fact that the RO concurred with the RS's evaluation did not infer any corollary Section K gradation metrics nor pronounced recommendation for promotion. The Board further noted the RO's comparative assessment is based on a wider spectrum based on his comparison of you to all Marines (both past and present) of the grade whose professional capabilities are known to the RO. Furthermore, the Board noted the report constituted the 10th report reviewed on grade by the RO at processing, a relatively mature profile and the fitness report was commendatory and contained no adverse comments or markings. Thus, the Board concluded 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 record shall remain unchanged.

You also indicate in your application that you are the victim of reprisal. The Board also determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC 1034. 10 USC 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy's follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with DoD policy you have the right to request review of the Secretary of the Navy's decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a de novo review and under 10 USC 1034(c) the Secretary of Defense cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Office of Legal Policy, 4000 Defense Pentagon, Washington, DC 20301-4000. Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and, a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the BCNR, therefore, please also include previously presented documentation that supports your statements.

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,

8/7/2024

