



**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. 8877-24  
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 10 September 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 February 2023 decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), the 22 December 2022 advisory opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMPB-23), and your response to the AO.

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 27 May 2021 to 6 January 2022. You also request supplemental consideration for promotion. The Board considered your contention that allegations for immorally wearing a Muslim thobe, acting like a Muslim adversary during training, and conducting an opposing force attack on your company constituting a lack of command and control is factually untrue. You also contend the Reviewing Officer (RO) and Third Officer Sighter (TOS) did not adjudicate several points in your rebuttal and did not adequately address your concerns in violation of the Marine Corps Performance Evaluation System (PES) Manual. Specifically, you were actually wearing a kurta,

a shirt of no religious significance and you maintained command and control by carrying a radio and choosing a time when your unit was packing for displacement. You assert that the wearing of foreign national garb is a common training practice, and you did not act in a religiously offensive manner. You further contend that your reporting officials did not closely follow submission procedures. The Reporting Senior (RS) made a series of corrections after you submitted your rebuttal and your fitness report was submitted 180 late. You also assert that the RS displayed bias in the writing of your fitness report when commenting, "This too is a mockery and causes confusion and question of the mental state of a commander" and "calling into question his mental state at the time . . ." You claim the comments show bias and unfounded speculation of your mental state. In conclusion, you provide that you are not asking for full adjudication of the above issues, instead you are citing bias by the RS and lack of adherence to duties and responsibilities by the RO and TOS as grounds for removal.

In response to the AO, you argued that nearly every sentence lacks a factual basis, the RO's statement is misleading, and the TOS adjudication is false. In the spirit of improving your unit's combat efficiency, you conducted an attack on them while they were packing up following the exercise. It is Marine Corps practice to wear opposing force dress during exercises. You were unjustly described as "acting" like a Muslim when all you did was wear a non-Muslim garment and conduct an opposing force ambush on your unit.

The Board noted that you were issued an adverse fitness report documenting your relief for cause as the Company Commander for █. Your fitness report was also marked adverse for "Judgement" as justification, the RS referenced a recent field exercise (FEX), during which you "donned a Muslim garment – a thobe and single-handedly attacked your company's perimeter showing a clear disconnect of our true adversary in the "FOE" and showing a complete loss of judgment and situational awareness." The RS also stated that you failed to "properly identify and place yourself at points of friction leading to loss of command and control of your company and loss of trust and confidence in your abilities to command." The Board also noted that the RO concurred with the RS's assessment of your performance and conduct and commented that you created additional friction and confusion for your company by single-handedly attacking them. The RO determined that you demonstrated a severe lack of judgment in this event, worthy of relief. The TOS adjudicated the factual differences; specifically, that the origin of the garment is only partially relevant, and your judgement and the perception the garment generated formed the basis for your RS's actions. The Battalion Commander felt, and the Regimental Commander concurred, that it was poor judgement for a company commander to act in such a manner. The TOS determined that the RS's physical presence is not required for an observed report, and the RS provided you with adequate counseling and feedback to improve performance. Additionally, while you may have drafted a "CAP" to address the command climate, the damage done to the command climate, coupled with a severe lapse in judgement, were grounds for the RS to determine that you were no longer fit to serve in command.

The Board substantially concurred with the AO and PERB's decision that you have not met the burden of proof nor shown by preponderance of evidence a substantive inaccuracy or injustice, warranting removal of your fitness report. In this regard, the Board noted that your fitness report reflects performance-based adversity. According to the PES Manual, "Performance based adversity reflects shortcomings identified with MRO's performance. Generally, performance-

based adversity refers to the MRO's repeated inability to meet the RS's expectations and accomplish the requirements of their assigned billet, or when the MRO fails to demonstrate the professional abilities commensurate with their grade and experience." The Board determined that your RS provided sufficient justification supporting the basis for adversity and there is sufficient evidence the RS, executive officer, and operations officer provided you with guidance, counseling, and mentorship. The Board also noted that your CO issued you a non-punitive letter of caution (NPLOC), on 28 December 2021, to address your unsatisfactory performance as █ and, on 29 December 2021, your CO issued you an intermediate counseling outlining seven performance indicators for you to improve upon. The Board also determined that the RO provided sufficient justification for his determination that your lack of judgment during the FEX was worthy of relief. In consideration of the totality of the evidence, the Board determined that your RO and the TOS sufficiently adjudicated the points and concerns in your rebuttal.

The Board found your arguments regarding your wearing of the garment during the FEX unconvincing. The Board determined that the origin of the garment was irrelevant, others found your actions offensive, you did not obtain approval or coordinate your attack or the wearing of "foreign national garb" with your chain of command, and your RS's determination that you failed to meet expectations regarding command and control is discretionary and not an error. Concerning RS bias by commenting on your mental state, the Board determined that the RS's comments do not constitute bias. When read in context, the Board opined that the RS was emphasizing the impact that your actions had on your Marines perception of you, which resulted in a loss of trust and confidence in you as their company commander.

Concerning any changes to the draft of your fitness report and purported late submission, the Board determined it is not unusual for an adverse fitness report to undergo several drafts before being submitted for processing. Moreover, an adverse fitness report is not final until it is reviewed by Headquarters Marine Corps (MMRP-31) and is accepted into the record. In this case, the Board noted that a draft version of the report was submitted, reviewed, and returned for perceived inadequacy and/or thoroughness of the TOS adjudication. The TOS's adjudication was subsequently addressed and corrected to the satisfaction of MMRP-31 prior to acceptance in to the official record. The Board also determined that the late submission of a fitness report is not a basis for removal. The Board thus concluded that your fitness report was written and filed in accordance with the applicable PES Manual and no corrective action is warranted. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Your request for a special selection board (SSB) will not be considered until you first exhaust your administrative remedies with the Marine Corps. Specifically, the Board cannot consider a request for supplemental promotion consideration because you have not yet exhausted all of your administrative remedies by first petitioning the Marine Corps Officer Promotions Branch for a SSB.

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,

9/26/2024

