

## **DEPARTMENT OF THE NAVY**

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

> Docket No. 10331-24 Ref: Signature Date

Dear

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 12 November 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 11 September 2024 decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), 11 April 2024 advisory opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch. The AO was provided to you on 11 September 2024, and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

The Board carefully considered your request to remove the fitness report for the reporting period 13 April 2019 to 2 June 2019. The Board considered your contention that the reporting period did not meet the minimum requirement, and the report should have been not observed. As evidence, you provided correspondence from your former Reporting Senior (RS).

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 fitness report is valid as written and filed in accordance with the applicable Marine Corps Performance Evaluation System (PES) Manual. The PES Manual provides that RSs shall not submit an observed report for periods of 89 days or less unless their observation results from meaningful personal contact that is not normally obtainable in a standard work setting. "Meaningful personal contact is defined as a significant increase in quantity and quality of observation during the reporting

period." The Board noted that the reporting period was 84 days, and the RS invoked an exception to policy in accordance with the PES Manual. Section I states, "Directed Comment, Observed Report of 89 days or less justification: MRO worked closely with RS over the reporting period, with daily contact. During the short period as part of the period as part of the period also noted the RS's correspondence recommending a correction to your fitness report, the Board also noted the RS's justification unpersuasive. The Board determined that the RS comments are sufficient to conclude that he intentionally wrote an observed report. The Board thus concluded there is no probable material error, substantive inaccuracy, or injustice warranting removal of your fitness report or removal of your 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.

