



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. 10483-24
Ref: Signature Date

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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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 3 December 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 █ decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), and █ 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.

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 or correct the fitness report for the reporting period 9 June 2022 to 30 April 2023. The Board considered your contention that the Reviewing Officer (RO) did not assume their role until the last month of the reporting period and the Reporting Senior (RS) was temporarily assigned for seven of the ten months. You also contend the fitness report's relative value was marked 80.00, the lowest of the RS's profile, the Section I comments did not match the attribute marks, and you received 'Commendatory Material' during the reporting period. You claim that you made changes to the operations procedures, and you called the Program Manager multiple times for not doing his job and mismanaging the

program. Besides reprisal and whistleblowing conduct, you believe the civilians did not follow the Marine Corps Performance Evaluation System (PES) Manual when writing fitness reports with proper counseling, marking, and comments. Additionally, you contend the RS used the fitness report as a counseling tool instead of accurately reporting your performance and proficiency.

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 or correction of your fitness report. The Board determined that your fitness report is valid as written and filed in accordance with the applicable PES Manual. In this regard, the Board noted that although the RS was TAD during the reporting period, the RS did meet the minimum observation period of 90 days or more and properly documented the period of non-availability in Section I. The Board also noted that the RO comments are favorable and appear well informed. The Board also determined the RO is not constrained by minimum periods of observation and according to the PES Manual; there are no hard guidelines on what constitutes sufficient knowledge and observation. The Board thus determined that the RO's evaluation of your performance is valid and in compliance with the PES Manual. The Board further determined that the perceived competitiveness of a report's relative value or comparative assessment mark is not a basis for removal or modification of a report and there is no PES Manual matrix to align assessment marks to Section I comments. The Board thus 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 request does not merit relief.

You also "indicate" in your application that you are the victim of reprisal. The Board, however determined that there was insufficient evidence to conclude that your fitness report was submitted as reprisal in violation of 10 U.S.C Section 1034. The Board noted that your statement ("Besides Reprisal and Whistleblower conduct") alone has no merit, and you provided no evidence to support your statement, thus the Board determined that your fitness report was not issued as reprisal action.

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,

12/20/2024

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