

DEPARTMENT OF THE NAVY

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

> Docket No. 10690-24 Ref: Signature Date



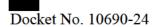
Dear ,

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 17 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 the fitness report for the reporting period 1 January 2020 to 31 December 2020. The Board considered your contention that the Reporting Senior (RS) provided an inaccurate statement to support an adverse mark, specifically, that personnel apprehended you. You claim that you were not apprehended, you were accused of "Interfering w/Agency Functions." You believed you were being mistreated, because a member selected you for additional COVID-19 screening on multiple occasions. After multiple additional screenings, you did not comply with instructions because you believed you were being racially profiled. Upon reflection, you



acknowledged that you should have voiced your concerns to the chain of command instead of refusing the screening. As evidence, you provided correspondence from the

The Board noted the PFPA Incident Report indicating that you were selected for COVID-19 screening; you refused and pushed an officer recruit to gain access to the turnstile. Later, you were intercepted, interviewed, and denied access to the ________. The Board also noted that you were issued an Administrative Remarks (Page 11) entry counseling you for interfering with agency functions by refusing to participate in the random COVID-19 screening selection and pushing an officer recruit aside to gain access to the turnstile.

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. In this regard, the Board noted that your fitness report was rendered adverse for receiving the fore mentioned counseling entry and for 'Judgement.' The RS justification properly noted your receipt of a counseling entry. The RS also noted that you pushed an officer recruit to gain access to the which resulted in you "being" personnel . . ." The Board also noted that the Reviewing Officer concurred with the RS's evaluation and the Third Officer Sighter found the fitness report administratively correct. The Board also determined that your reporting officials provided sufficient justified supporting the adverse nature of your fitness report. Concerning the term "apprehended," the Board determined that you were provided an opportunity to submit a statement in rebuttal to the RS comments and you availed yourself of that opportunity. The Board further determined that your rebuttal is a matter of record and constitutes sufficient redress and clarification. Moreover, the term "apprehended" does not invalidate the underlying basis for adversity. 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 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.

