



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

██████████
Docket No. 10716-24
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 7 January 2025. 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 decisions by the Marine Corps Performance Evaluation Review Board (PERB) and the 30 July 2024 Advisory Opinion (AO) provided to the PERB by the Performance Evaluation Section (MMPB-23). Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

The Board carefully considered your request to modify the Reporting Senior (RS) portion of your change of duty fitness report for the reporting period 13 June 2023 to 6 March 2024. The Board considered your contentions that the RS intentionally marked the performance attributes in a manner that ensured the report would be at the bottom of her profile out of reprisal and not as a result of performance. The Board also considered your claims that the fitness report was skewed due to a relationship between you and the RS. Next, you claim that you received a Non-Punitive Letter of Caution and were removed from the unit because you could no longer continue a professional working relationship with the RS. Finally, you claim that because the Reviewing Officer (RO) markings were the complete opposite of the RS; therefore, this justifies your request to have the RS portion of the fitness report removed.

The Board, however, substantially concurred with the PERB's decision that you did not meet the burden of proof to find a substantive inaccuracy or injustice exists to warrant modification of the 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 you failed to provide sufficient evidence to conclude that your performance and conduct during the reporting period did not warrant the RS markings or comments reflected in the contested fitness report. Next, the Board noted the RO concurred with the RS evaluation further affirming the validity of the report as written. Lastly, the Board noted a fitness report is not considered unjust solely because the relative value or comparative assessment mark are rated lower than other reports. Thus, 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 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,

2/27/2025

