



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

██████████
Docket No. 10943-24
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 21 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 decision by the Marine Corps Performance Evaluation Review Board (PERB) and the 23 April 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 remove your Transfer Fitness Report for the period 25 June 2022 to 15 December 2022. You claim, three days before executing permanent change of station (PCS) orders, the Sergeant Major (SgtMaj) handed you a Page 11 counseling entry from the Battalion Commander indicating that you were being relieved for cause. According to you, the SgtMaj explained the counseling was intended to hinder your promotion. You signed the counseling entry with the intent to rebut and you requested mast to the Commanding General. As a result of your request mast, you claim the Battalion Commander shredded the counseling. You provided the counseling for the Board's consideration; noting that it is not located in your Official Military Personnel File (OMPF). You further contend that the fitness report is marked with low markings and "velvet daggers;" which are detrimental to your career. You assert that you faced reprisals for challenging your leadership; as indicated by adverse comments in the contested fitness report. Additionally, you contend that you received no corrective counseling during the reporting period and only praise from your Company Commander; as evidenced by texts provided less than three weeks before the period ended. The Board, however, substantially concurred with the PERB's decision that you did not meet the burden of proof to show a substantive inaccuracy or injustice exists to warrant 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 RS established his first sergeant profile with the contested report as the first report written on and the Section I and K comments are average but not adverse. Next, 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. Finally, the Board noted that the PES Manual does not mandate counseling; as counseling can take many forms. The Board determined your claims of low markings and insufficient counseling were unsubstantiated by the evidence. Thus, the Board concluded that 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)), [REDACTED]

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

[REDACTED]