

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

concurred with the RS's evaluation in both instances. However, you further claim the RO downgraded your comparative assessment in the second report despite the RS's evaluation reflecting an improvement in your performance. In this regard, you claim that pursuant to the Performance Evaluation System (PES) Manual, which states that RO's assessment should be consistent with their profile and a Marine reviewed in back-to-back periods should receive at least the same mark if performance remains constant. You further argued that the RO did not adhere to the PES manual by downgrading the assessment while concurring with the RS's improved evaluation. Next, you assert that due to the competitive nature of the Fiscal Year 2024 (FY24) Colonel Promotion Selection Board (PSB), this fitness report might make the difference between whether you are selected for promotion. Lastly, you assert the RS and RO have long since retired and are unavailable to provide further context in this matter.

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 PES Manual. In this regard, the Board noted although the PES Manual suggests maintaining consistent marks for back-to-back reporting periods with unchanged performance, it is important to note the term "should" is advisory and not mandatory, unlike "shall." Additionally, the Board noted the respective back-to-back fitness reports in your case were evaluated for different duty assignments, rendering the fitness reports incomparable. Next, the Board noted although there is evidence of a reduction in the Section K3 RO Comparative Assessment in a subsequent report, there is insufficient evidence to support your claims that the reduction was unwarranted, furthermore, there is no evidence suggesting that your performance warranted a higher grade than assigned. Further, the Board determined the perception that a particular fitness report may reduce a Marine's competitiveness for promotion, selection, or assignment is irrelevant in determining whether a report is adverse. The adversity lies in the recorded performance, not in perceived future competitiveness. Lastly, the Board determined a report is not considered unjust solely because the RV or comparative assessment mark is rated lower than other reports.

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Next, concerning your report for the period ending 15 August 2008, you asked the Board to modify the fitness report to Not Observed (NOB). The Board considered your contentions the fitness report should be amended to NOB based upon the 29 February 2016 Headquarters, Marine Corps (MMRP-30) Waiver. You claim that [during the reporting period you were at] Officer Candidate School (OCS), and all fitness reports for personnel supporting summer training cycles were directed to be observed. Then, in 2013 and again in 2016, MMRP-30 recognized that OCS's policy to require observed short duration fitness reports for summer augments unjustly and negatively impacted the career prospects for those officers and made NOB reports the default. The Board considered your contentions that although you were a member of the OCS permanent staff, the section K comments clearly indicate that you were evaluated as an OCS summer augment staff member. Specifically, you assert the RV of the contested report at processing was 81.08 and the cumulative RV is 84.04 and is the only bottom third fitness report at processing and the lowest cumulative RV fitness report in your nearly 20-year career. You further contend that due to the "outlier" nature of this report in your nearly 20-year record corroborates justification for MMRP-30's waiver. You indicate on 5 February 2024; you had a career counseling session in preparation for the FY24 Colonel PSB and were advised to submit your request based upon the 2016 MMRP-30 Waiver of Policy for Augment

Personnel for OCS. Next, you assert although you have been selected on several boards in spite of the unjust harm incurred by the contested report over the last 16 years and due to the competitive nature of the FY24 Colonel PSB, the contested report may make the difference between your selection. Lastly, you assert both the RS and RO have long since retired from the Marine Corps and were unavailable to provide additional context in this matter.

However, the Board 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 PES Manual. In this regard, the Board noted your request affirms the Section K comment clearly indicates that you were evaluated as an OCS summer augment staff member. However, the Board also noted the OCS waiver you referenced was issued more than seven years after the contested report was processed and did not include provisions for grandfathering prior reports. Next, the Board noted the RS explicitly states in Section I comments, "although less than 90 days, I have had sufficient observation of MRO to submit an observed report," which would have authorized the report even if the waiver had been in effect. Lastly, the Board also noted that the report average generated a cumulative RV of 84.04, a likely concern, however the Board determined you failed to offer a compelling argument that the RS conspired to intentionally write the fitness report with a low relative value, nor any similar or corollary indictment of the RO portion of the evaluation. Furthermore, as previously mentioned above, low relative value does not constitute grounds for removal of a contested fitness report. The fitness report was not adverse, did not reference any pending legal matters, and properly reflected your duty assignment.

Based on the available evidence, the Board concluded there is insufficient evidence of an error or injustice warranting the relief requested for removal of the contested fitness reports.

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,

2/28/2025

