



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

█  
Docket No: 6674-20

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.

A three-member panel of the Board, sitting in executive session, considered your application on 13 July 2021. 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 August 2020 decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), and 29 June 2020 advisory opinion (AO) provided to the PERB by the Manpower Management Division Records & Performance Branch (MMRP-30) and your response.

The Board carefully considered your request to remove your fitness report for the reporting period 5 November 2019 to 17 February 2020. The Board considered your contentions that conduct-based adversity should be reported only after a matter is fully adjudicated, you appealed your civil conviction, and therefore, a conviction under appeal is not fully adjudicated. You also contend that your fitness report should not have referred to your civil court proceeding and if your conviction was mentioned, the status of your conviction should also be a matter of record. You claim that you were led to believe that your Non-Punitive Letter of Caution (NPLOC) was an opportunity to move forward and you would be able to continue to serve as the company commander. You also claim that your marks for conduct-related attributes would be accurate if they occurred after the NPLOC and your reporting senior (RS) incorrectly labeled your conviction as drunk and disorderly, when public intoxication was the lesser charge.

The Board, however, substantially concurred with the PERB decision and AO that your fitness report is valid and should be retained as filed. In this regard, the Board noted that your fitness report was marked adverse for 'Setting the Example' and 'Judgement', your RS provided the required justification and section I comments, and your reviewing officer (RO) concurred with your RS's evaluation and comments. The Board also noted that the adverse nature of your fitness report was based upon your failure to report your alcohol related incident in a timely manner to your former command. The Board noted, too, that the Marine Corps Performance Evaluation System (PES) Manual provides that RSs must document unacceptable professional character and the factual basis for adversity. The Board determined that your reporting official's documentation of your failure to report your alcohol related incident was substantive, factual, and sufficient to justify the adverse nature of your report. Moreover, your performance met the PES Manual criteria for conduct-related adversity, you were afforded the opportunity to comment on all adverse material and the Third Officer Sighter found your reporting official's comments factually correct and administratively accurate. The Board further determined that according to the PES Manual, RS's are not to delay submitting reports while awaiting an appeal and the dismissal of your civil charges does not invalidate the basis for your report's adversity. Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective 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,

7/30/2021

[REDACTED]

Executive Director  
Signed by: [REDACTED]