



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

█
Docket No. 1059-21
Ref: Signature Date

█
█
█
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 5 May 2022. 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. The Board also considered the 20 October 2021 Advisory Opinion (AO) from Navy Personnel Command, Office of Legal Counsel (PERS 00J), the 8 February 2022 AO from Office of the Judge Advocate General for Criminal Law (Code 20), and your rebuttal responses of 29 October 2021 and 8 March 2022, respectively.

The Board determined your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully considered your request to correct your Official Military Personnel File as follows:

- 1) Remove all records related to imposition of non-judicial punishment (NJP);
- 2) Remove all records related to the Board of Inquiry (BOI);
- 3) Reinstate nuclear Additional Qualification Designator (AQD);
- 4) Remove all adverse fitness reports related to the NJP;

- 5) Upon removal of negative records, convene a Special Selection Board (SSB) for consideration for promotion to O-5, back date promotion to be consistent with peers, thus awarding back pay for the difference between O-4 and O-5;
- 6) Repayment of bonuses recouped as a result of AQD removal and Detachment for Cause (DFC);
- 7) Payment of all nuclear bonuses that should have been received had the AQD not been removed. In addition, suspend recoupment efforts and refund collected monies for loss of Nuclear AQD;
- 8) Award back pay of sea pay and sub pay;
- 9) Award payment for all legal fees accrued since January 2017;
- 10) As modified by the AO rebuttal of 29 OCT 21: Add the time between 1 August 2021 and the date which the Board takes actions to total active duty service;
- 11) As added in supplemental documents submitted 16 August 2021: Pay for, and immediately update the April 2017 Navy Times article;
- 12) As added in supplemental documents submitted 16 August 2021: Pay compensation for the April 2017 Navy Times article;
- 13) As added in supplemental documents submitted 16 August 2021: Pay compensation for the cost of a Master's Degree

The Board noted your previous submission, Docket No: NR20190006998, requested the same relief, with the exception of the relief requested in the AO rebuttal and supplemental package. The previous Board denied all requested relief in Docket NR20190006998. Further, the Board noted it does not have authority to grant the relief requested regarding legal feels, the Navy Times article, or compensation for your master's degree.

In your current request, you have submitted detailed explanation of new evidence in support of your previous contentions, reemphasized several previous contentions, and introduced new contentions. The Board carefully reviewed and considered the evidence and contentions submitted in your 23 February 2021 request for reconsideration and the additional discussion added by your 16 August 2021 correspondence.

The Board considered each of your contentions regarding the imposition of NJP. Specifically, you contend it was error and unjust to deny you the right to demand trial by court-martial because the Article 15 vessel exception did not apply to you since you were not attached to or embarked in a vessel within the meaning of Article 15. You further contend there was insufficient evidence to uphold the NJP finding that you sexually assaulted [REDACTED]. As supporting evidence, you submitted text messages between your wife and yourself which you contend have

been authenticated and validated by a technical expert and give you an alibi. Additionally, you contend [REDACTED] entire story is impossible, has no supporting evidence, and has been systematically proven by you to be a lie.

With respect to the Article 111 charge, you contend the Government incorrectly charged you because there is no offense of being “impaired by alcohol” under Article 111. You further contend the use of an Alcohol Detection Device (ADD) violated OPNAVINST 5350.8 and substantially violated your right to due process. Additionally, you contend it was a “violation” to refer charges to NJP without some other evidence of impairment. You also contend that had you known the blood alcohol content was obtained from the ADD and below the limit, you would not have pled guilty to the Article 111 charge. Lastly, you contend that since law enforcement was not involved and there were no witnesses to you operating the vehicle, you cannot be charged under Article 111 because you did not have “the present capability and power to dominate” your vehicle.

The Board also considered your contention that its previous decision was arbitrary, capricious, an abuse of discretion, and not supported by substantial legal evidence but rather that the Board relied on the AO which made no legal arguments nor based its opinions on facts. You contend the previous Board’s over reliance on the AO was an error and unjust.

Further, the Board considered the contentions you raised in the supplemental documents submitted on 16 August 2021. Specifically, you contend the Navy wrongfully released your name, attacked your character, and implied your guilt in direct violation of a naval instruction.

Upon review and consideration of all the evidence of record, this Board substantially concurred with the Code 20 AO and determined the contentions and evidence are without merit. This Board, having determined the previous Board’s decision was not arbitrary, capricious, an abuse of discretion, or overly or improperly reliant on the AO, concurred with the previous Board’s findings and conclusions.

The Board specifically noted that whether the vessel exception would have applied to your case is immaterial because you voluntarily accepted NJP in lieu of trial by court-martial by signing a Pre-Trial Agreement (PTA). The Board further noted that as part of the PTA, you elected to accept NJP and, as the PTA makes clear, you were never deprived of your right to a court-martial. Additionally, the Board noted there is no evidence you were coerced into signing the PTA, which on its face clearly states you are voluntarily accepting NJP in lieu of court-martial. The evidence also reflects your counsel provided adequate and competent legal advice which shows your decision in the PTA to accept NJP in lieu of court-martial was voluntarily, knowingly, and intelligently made. The Board also considered the additional arguments raised in your AO rebuttal regarding your right to demand trial by court-martial, the vessel exception, and the PTA but substantially concurred with the Code 20 AO and concluded there was insufficient evidence of an error or injustice that warranted relief.

The Board also substantially concurred with the Code 20 AO’s determination regarding the text messages between yourself and your spouse. Specifically, the Board noted the text messages might have been relevant at the NJP but concluded they are not so significant as to exonerate you

or demonstrate [REDACTED] was lying about the incident. The Board also noted the AO's observation that the Federal District Court considered these same text messages and was unpersuaded [REDACTED] was lying about the incident but instead found she was credible and acting within the scope of her employment. The Board also noted the AO's discussion that "time" was not an essential element of the offense and therefore whether a victim remembers the precise time an incident occurred is a matter of credibility for the trier of fact to consider. In this case, the Board determined that it was evident from the lengthy NJP transcript that the officer imposing NJP went to great lengths to consider [REDACTED] credibility, including the fact she could not recall exactly when the incident occurred. As no evidence establishes the exact time the incident occurred, the fact that you were texting with your wife during the same general timeframe does not, in the Board's opinion, prove [REDACTED] is lying or that the incident did not occur. The Board also considered your rebuttal discussion and arguments regarding the text messages and, after its own discussion and review of the record, determined the text messages do not prove [REDACTED] testimony to be false. The Board concluded the addition of the text messages is not sufficient evidence of a material error or injustice that warrants your requested relief.

The Board also substantially concurred with the Code 20 AO that you were lawfully charged with violating Article 111. Further, the Board determined there was adequate circumstantial evidence in the statements made to the Naval Criminal Investigative Service to establish you physically controlled a vehicle while impaired by alcohol. The Board considered your discussion of the Article 111 charge in your rebuttal to the AO but concluded there was insufficient evidence of a material error or injustice in the charging of the Article 111 violation at NJP.

Lastly, the Board considered the new contentions you raised in the supplemental documents submitted on 16 April 2021. Specifically, the Board considered your contentions regarding the Navy's release of information to the media, its attack on your character, and its implication of guilt. The Board noted you requested the Board direct an immediate update to the Navy Times article and compensation for the April 2017 article. The Board also noted you requested reimbursement for the cost of a master's degree. The Board, however, noted that it only has the authority to correct error or injustice in military records and pay claims related to the correction. Your requested corrections based on these contentions are not within the Board's authority. The Board does not have general authority to settle claims nor can it reimburse you for the alleged lost opportunity to obtain a master's degree. The Board concluded your requested relief is not within its authority to grant.

Upon review and consideration of all the evidence of record and applicable references, the Board determined your contentions are without merit and concluded there is insufficient evidence of an error or injustice warranting your requested relief. This Board concurred with the previous Board's finding in NR20190006998. Based on these findings, the Board determined there was no basis to remove the derogatory material related to your NJP, the records related to the subsequent BOI, or the adverse fitness reports; direct a SSB to be convened; reinstate your nuclear AQD; reimburse the recouped bonuses; award back pay of your special duty pays; or modify your total active duty service.

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,

6/6/2022

