



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

■  
Docket No. 2314-21  
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 applications on 13 January 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 applications, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies, as well as the 23 November 2021 Advisory Opinion (AO) provided by the Headquarters Marine Corps Military Personnel Law Branch (JPL). The AO was provided to you on 1 December 2021, and although you were given 30 days in which to submit a response, you did not do so.

The Board carefully considered your request to remove your 2 October 2019 Administrative Remarks (Page 11) 6105 counseling entry. The Board considered your contentions that while you were at your daughter's birthday party at the base pool, you had a drink before you left; however, another patron saw you drinking and subsequently called the police. You assert that you arrived at your residence, continued to drink, and 30 minutes later, the military police arrived, questioned you, and told you that you would not be charged. You further assert that the police returned to your residence later that night and arrested you for driving under the influence, even though there was a six hour gap between the incident and the arrest. On 2 October 2019, you appeared in court on base and the District Court dismissed your charges. You also assert that you were found Not Guilty at Office Hours.

The Board, however, substantially concurred with the AO that, given the presumption of regularity, the commanding officer (CO) was within his discretionary authority to issue you the Page 11 6105 counseling entry for your alcohol related incident, despite civilian charges against

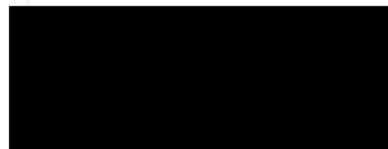
you being dismissed. The CO determined that it was appropriate to issue you the counseling concerning your misconduct and the entry was issued in accordance with the Marine Corps Separations Manual and Individual Records Administrative Manual. The Board noted that you acknowledged the contents of your counseling entry and because you did not make a rebuttal statement, you forfeited your first opportunity to rebut the counseling. The Board thus concluded that your petition did not demonstrate probable material error, substantive inaccuracy, or injustice warranting removal of the contested Page 11 6105 counseling entry from your official military personnel file.

You also indicated 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,

2/2/2022

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Deputy Director

Signed by:

A black rectangular redaction box covering the name of the Deputy Director.