



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

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Docket No: 3685-21
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 14 December 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.

The Board carefully considered your request to remove your finding of guilt for violation of Article 107, Uniform Code of Military Justice (UCMJ) during your 19 August 2019 non-judicial punishment (NJP). You also request to be restored to the grade E-6 and to receive back pay and allowances. The Board considered your contention that your commanding officer's (CO's) finding of guilt at NJP for violation of Article 107, UCMJ was not determined according to Navy Regulations and procedures. You also contend that you were found guilty without any evidence, there was no 'preponderance' in support of a finding of guilt, and your punishment was substantially unjust. You claim that you were reduced in rank because you were convicted of two offenses. You also claim that you reasonable understood that your replacement was taking responsibility for the necessary weapons-check and was acting as the crew served weapons (CSW) instructor for the shoot.

The Board noted that during August 2019 the CO, █ directed a Preliminary Inquiry (PI) into the preventative maintenance on .50 caliber CSW onboard the █ after three weapons were found to be unserviceable during a 6 August 2019 CSW shoot. The investigating officer (IO) concluded that based on the extremely poor functional condition of the .50 caliber M2 machine guns, it was clear that pre-fires were not properly performed on the weapons in accordance with regulations. The IO noted that, as a result, members risked potential damage to equipment and injury to █ crew members by placing the .50 caliber M2 machine guns into service. The IO recommended that you and the other members responsible for the armory be referred to NJP and that you be removed from your duties immediately. The Board also noted that you received NJP on 19 August 2019 for violation of Articles 92 and 107, UCMJ, you were found guilty of both violations and awarded reduction to E-5. The

Board noted, too, that you appealed your CO's finding of guilt for violating Article 107, UCMJ on the basis that your punishment was unjust and disproportionate to the offense.

The Board noted that, on 11 September 2019, the CO, █ submitted a response to your appeal. Your CO noted that according to the PI there was no documentation of any pre-fire maintenance prior to issuing the weapons, and according to records the semi-annual preventative maintenance had been performed by you in reasonable proximity to the event such that the weapons were expected to be in a heightened state of readiness. Your CO also noted that given the lack of documented utilization of the M2 .50 caliber machine guns between the semi-annual preventative maintenance and the live firing event, there is no reasonable explanation for the poor state of material readiness other than to conclude that the maintenance had been fraudulently accounted for and the weapons had, in fact, been neglected.

The Board also noted that, on 14 July 2020, the Commander, █, denied your appeal and noted that given the complexity of this matter and the importance to you, he deliberated extensively on the matter. He determined that your findings of guilt were supported by sufficient evidence and the findings were proper as a matter of law. He also determined that the preponderance of evidence showed that the semi-annual maintenance checks on the .50 caliber machine guns were, at best, improperly performed and, at worse, not performed at all, your signature for such checks affirmed that the maintenance readiness checklist was followed precisely and in its entirety, however, it was highly unlikely that the semi-annual maintenance was performed given the level of degradation discovered during the live fire event on 6 August 2019. The Commander also found that your punishment, including your reduction to E-5 were proportionate to the offenses.

The Board substantially concurred with the Commander, █ determination. In this regard, the Board noted that the PI and your chain of command had sufficient evidence to determine that you prepared maintenance records attesting to the readiness condition of the .50 caliber machine guns, however, the level of readiness was not consistent with records that you affirmed. The Board determined that your CO's findings of guilt were based upon a sufficient preponderance of the evidence. The Board also determined that your NJP was conducted according to the *Manual for Courts-Martial* (2016 ed.) and your punishment was just and proportionate to your offenses. 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,

1/10/2022

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Deputy Director
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