



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

█
Docket No: 3697-21
Ref: Signature Date

█
█
█
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 27 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 application, together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies.

You underwent non-judicial punishment (NJP) on 16 April 2019; your commanding officer (CO) found you guilty of violating Articles 92 and 107 of the Uniform Code of Military Justice (UCMJ). Specifically, you were found to be derelict in the performance of your duties by failing to supervise maintenance actions and making a false official statements regarding the number of crunches you conducted during a Physical Fitness Test (PFT) and the status of aircraft maintenance being conducted by Marines under your supervision. You also received an adverse fitness report covering the period 6 November 2018 to 16 April 2019 due to your NJP.

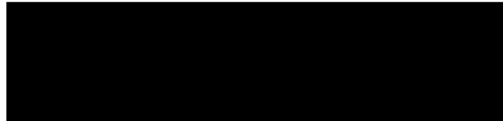
The Board carefully considered your request to remove the unit punishment book (UPB) entry of 16 April 2019 documenting the NJP. You argue that the NJP should be removed since the CO was given false information prior to the NJP proceedings. Additionally, you argue that you were assigned Extra Military Instruction (EMI) for the same offense prior to the NJP. Finally, you argue that the CO was not provided all the relevant evidence, specifically a video showing the entire crunch evolution during the PFT. You included supporting evidence from your former CO, who adjudicated your NJP, discussing the EMI that was administered without his authority and recommending your continued retention and promotion in the Marine Corps.

In reviewing the evidence in your case, the Board noted that you did not appeal your NJP and took responsibility for your misconduct in your response statement to your adverse fitness report. Further, the Board considered that the CO letter from 25 May 2021 did provide support for your allegations that the NJP findings were based on erroneous and incomplete information. These factors led the Board to conclude that the preponderance of the evidence supports the findings of the NJP despite your arguments to the contrary. In addition, the Board was not persuaded by your arguments that EMI administered prior to the NJP somehow invalidated your NJP. The issue of whether the EMI constituted hazing was deemed outside the purview of the Board's review. However, the Board found no legal prohibition under the Manual of the Judge Advocate General or UCMJ that prohibited the CO from imposing NJP for misconduct which was the subject of EMI. In making this finding, the Board also considered that your false official statement regarding the PFT was not the subject of EMI. Consequently, the Board determined there was insufficient evidence to show an error or injustice regarding the 16 April 2019 NJP and concluded that the UPB entry shall remain in your record.

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,

2/9/2022

A large black rectangular redaction box covering the signature area.

Executive Director

Signed by:

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