



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: 4478-21

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 25 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, as well as the 15 September 2021 advisory opinion (AO) furnished by the Marine Corps Military Personnel Law Branch (JPL). The AO was provided to you on 21 September 2021, and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

The Board carefully considered your request to remove your 9 December 2019 non-judicial punishment (NJP) from your record. The Board considered evidence that you were found not guilty in civil court on 27 May 2021 and your case was dismissed.

The Board, however, substantially concurred with the AO. In this regard, the Board noted that you received NJP for violating Article 113, Uniform Code of Military Justice (UCMJ) for the drunken or reckless operation of a vehicle on 24 November 2019. The Board also noted that you acknowledged your Article 31, UCMJ Rights, accepted NJP, certified that you were given the opportunity to consult with a military lawyer, acknowledged your right to appeal, and you elected not to appeal your commanding officer's (CO's) finding of guilt at NJP.

While the Board considered the fact your civilian charges related to the driving while intoxicated were dismissed, the Board found no evidence in your record that you did not operate or

physically control a vehicle while impaired by a substance on 24 November 2019 and you provided none with your application. Moreover, the Board considered that the evidentiary standard in a criminal trial is “beyond a reasonable doubt,” while the standard at NJP, is “by a preponderance of the evidence.” Based on these factors, the Board concluded evidence that your case was dismissed in civilian court does not equate to a finding of not guilty at NJP. Further, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. As previously discussed, the Board determined the evidence documents that your NJP was conducted in accordance with the *Manual for Courts-Martial* (2019 ed.). Therefore, the Board found your supporting evidence insufficient to overcome the presumption of regularity in your NJP. Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the NJP from 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,

2/10/2022

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Executive Director

Signed by: █