



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. 5733-21
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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 24 February 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 carefully considered your request to remove an Administrative Remarks (Page 11) 6105 counseling entry dated 4 May 2012 from your official military personnel file (OMPF) because you contend the counseling has impacted your career and prevented you from being considered for promotion to the next rank. Specifically, you contend the Page 11 entry should be removed because the misconduct that formed the basis for the counseling have been dismissed with prejudice in a court of law and dropped from the Marine Corps Consolidated Law Enforcement Operations Center. Due to these charges being dismissed, you contend the Page 11 is erroneous, inaccurate, unjust, and “not in compliance with MCO or the policies and procedures contained in other Marine Corps directives.”

The Board noted your previous request, Docket Number NR20160003319, was denied. Specifically, the Board noted the unfavorable advisory opinion (AO) relied upon by the Board. The AO stated your assertion that the dismissal of charges rendered the Page 11 entry in error or unjust lacked merit. The fact that your charges were dismissed does not negate the fact you

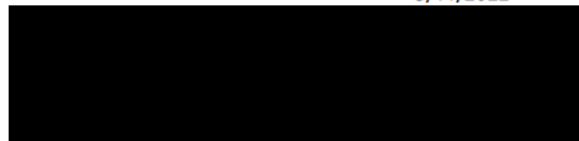
displayed a lack of judgment when you recklessly drove while impaired and under the influence of alcohol because there is no evidence the traffic court adjudicated the merits of the offenses.

Due to the new supporting documents, the Board carefully reconsidered your request for relief. The Board reviewed the documents but determined the newly submitted evidence is insufficient in establishing a material error or injustice warranting removal of the counseling entry. The Board noted the dismissed charges but determined the traffic court's dismissal did not preclude the Commanding Officer (CO) from counseling you on the underlying misconduct. In making this determination, regardless of the traffic court dismissal, the Board considered that it remains undisputed that you committed the misconduct that is documented in the counseling. Therefore, the Board determined the contested counseling entry of 4 May 2012 creates a permanent record of matters the issuing CO deemed an essential part of your military history. The Board also determined the entry met the requirements detailed in MCO P1070.12K W/CH 1 (IRAM). Specifically, the Board noted the entry provided the opportunity to rebut the entry and was appropriately issued by the CO as evidenced by his signature on the entry. The Board thus concluded there is insufficient evidence of material error 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,

3/11/2022

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Executive Director

Signed by 