



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

██████████
Docket No: 7983-21
Docket No: 5748-21
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 applications on 5 May 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 the 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. The Board also considered the 29 March 2022 Advisory Opinion (AO) provided by Headquarters, U.S. Marine Corps Military Personnel Law Branch (JPL), as well as your additional material and rebuttal of 27 April 2022.

The Board carefully considered your request to remove your fitness report (Fitrep) for the reporting period 5 November 2019 to 17 February 2020, and all material in your commendatory and derogatory folder in your official military personnel file (OMPF) associated with the 28 August 2020 Report of Misconduct (ROM), to include all 12 pages related to the matter. The Board noted that you received the contested Fitrep and ROM as a result of an alcohol-related incident (ARI) that occurred on 10 August 2019.

The Board considered your contention that a panel of this Board that denied your request to remove your contested Fitrep (NR20200006674) wrongfully relied on documents regarding your pending legal matter that had not been fully adjudicated in civilian court. You argue that charges against you were dismissed on 10 July 2020, thus it was in violation of the Performance Evaluation System (PES) guidance for your Reporting Senior to mention the incident prior to adjudication. Moreover, your relief for cause due to a failure to report an ARI, and your Reporting Senior accusing you of lacking judgment was improper, as there is no guidelines or policy for self-reporting an ARI.

The Board carefully considered your statement and all evidence provided, and determined that the contested Fitrep was issued in compliance with Performance Evaluation System (PES) guidance, and that the actions of the civilian court do not invalidate the underlying basis for the report adversity, which is due to your relief and your Reporting Senior's loss of trust and confidence. The Board thus concluded that there is insufficient evidence of an error or injustice warranting removal of the Fitrep from your OMPF.

You also contend you personally informed your chain of command of the incident and there was no other information provided to them, and after dismissal and expungement of the charge, you are being blatantly punished through administrative matters. You further contend you were wrongfully arrested and briefly detained due to an alleged intoxication and there was no breathalyzer or blood test conducted, only a presumption of intoxication by a law enforcement officer. You assert this action represents an injustice as a means to end your military career without sufficient evidence that could not support a conviction or military separation.

The Board, however, substantially concurred with the 29 March 2022 AO that the ROM was issued in accordance with the Legal Support and Administration Manual (LSAM) and Officer Administrative Separations guidance. In this regard, the Board noted that your ROM was reviewed by the Deputy Commandant, Manpower and Reserve Affairs to be sufficient in law and fact, as advised by the Staff Judge Advocate to the Commandant of the Marine Corps, and directed inclusion of the adverse material in your OMPF. The Board further noted that, in accordance with LSAM guidance, the General Court Martial Convening Authority (GCMCA) is not bound by the actions of military or civilian court and, therefore, determined that inclusion of adverse material in your OMPF was at the discretion of the GCMCA. The Board thus concluded that your evidence is not sufficient to warrant relief of removing the ROM and all related matters.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon the 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,

6/6/2022



Deputy Director

Signed by: 