



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: 1368-22

Ref: Signature Date



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 3 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 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 the Article 113 charge from your 2 December 2020 unit punishment book (UPB)/non-judicial punishment (NJP) and 25 November 2020 Administrative Remarks (page 11) entries. The Board considered your contention that the driving while intoxicated (DWI) traffic violation was dismissed by the civil court. As evidence, you furnished civil court documents.

The Board noted that you received NJP on 2 December 2020 for violating Uniform Code of Military Justice (UCMJ) Article 92 (failure to obey an order) and Article 113 (drunken or reckless operation of a vehicle) for driving recklessly, physically controlling a vehicle while under the influence of alcohol and failing a sobriety test. 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, and you elected not to appeal your commanding officer's (CO's) finding of guilt at NJP. On 25 November 2020, you were issued a page 11 entry counseling you for being charged by civilian authorities for driving your vehicle while impaired. On the same date, you were notified that you are eligible, but not recommend for promotion to

the next higher grade for three months. You acknowledged both entries, were afforded the opportunity to submit a rebuttal and you elected not to submit a rebuttal.

The Board noted that the standard when determining guilt in a criminal trial is “beyond a reasonable doubt,” while the standard at NJP is “by a preponderance of the evidence.” Therefore, the Board did not find the criminal proceedings result to be dispositive of the NJP charges in your case. After reviewing the evidence, the Board determined that your CO had sufficient evidence to support his finding of guilty at NJP. The Board also determined that your CO acted within his discretionary authority and your NJP was conducted pursuant to the *Manual for Courts-Martial* (2019 ed.). Moreover, your CO’s finding of guilt is not bound by the outcome of your civil court proceedings and found that your NJP and page 11 entries were supported by a preponderance of the evidence. 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,

5/31/2022

