



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

█  
Docket No: 1544-22

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 17 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.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully considered your request to remove your 27 August 2020 unit punishment book (UPB)/non-judicial punishment (NJP). The Board considered your contention that the NJP occurred before your conviction in civil court. You claim that after battling the case for a year, the charge was dismissed and you are in the process of having your civil record expunged. You also claim that the NJP is preventing you from reenlisting and progressing in the Marine Corps. As evidence, you furnished a █ Veterans Treatment Court Certificate of Completion and Order of Dismissal.

The Board noted that you received NJP on 27 August 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 the drunk and reckless operation of a vehicle, aircraft or

vessel and for having a blood alcohol concentration (BAC) equal to or above the legal limit for █. 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 acknowledged your right to appeal. You indicated your intention to appeal your commanding officer's (CO's) finding of guilt at NJP, yet no appeal was submitted.

The Board noted that the █ Veterans Treatment Court (VTC) Program is a diversion program for Justice Involved Veterans (JIVs) who are currently facing prosecution for one or more criminal cases. The program offers offenders a treatment option that is judicially supervised and is designed to divert JIVs out of the traditional criminal justice process and into appropriate rehabilitative alternatives. As a condition, the veteran must enter a plea of guilty upon admission into the VTC. Based upon your guilty plea in civil court, the Board determined that your NJP was supported by a preponderance of the evidence. The Board also determined that the completion of a diversion program is not tantamount to an acquittal of your charges. Moreover, the Board concluded your CO acted within his discretionary authority and was not required to delay NJP proceedings pending the outcome of your civil case. As a result, the Board determined your NJP was imposed in accordance with the *Manual for Courts-Martial* (2019 ed.) and remains valid. 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,

6/5/2022

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Executive Director  
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