



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

█  
Docket No: 1736-22

Ref: Signature Date

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Dear █

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 14 June 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 6 May 2022 advisory opinion (AO) furnished by the a Licensed Clinical Psychologist and your response to the AO.

The Board carefully considered your request to remove your Report of Misconduct (ROM), Report of Board of Inquiry (BOI), and associated derogatory material or to redact statements related to unsubstantiated allegations for Uniform Code of Military Justice (UCMJ) Articles 86 and 113. The Board considered your contention that the changes to your record should be made based upon the Board of Inquiry (BOI) findings and termination of proceedings. You also contend that any reference made to the unsubstantiated allegations are irrelevant and prejudicial, the inclusion of unsubstantiated facts and allegations are inaccurate, and will prevent a fair assessment of your service. You claim that much of the information that the BOI members used to determine that the allegations were unsubstantiated is missing or not clearly presented. You also claim that the BOI concluded that your misconduct was more in part a medical issue than administrative or legal in nature, dealing with the disease of alcoholism and the diagnosis of alcohol use disorder. Further, none of the medical information was included.

The Board noted that according to the Commanding General, █  
█ (CG, █ █, you are a substance abuse rehabilitation failure; you

were found to be in physical distress and incoherent at your desk at work and two Gatorade bottles with mixed alcohol beverages were present on your desk; you were admitted to inpatient treatment for substance abuse; during your promotion ceremony you were unable to stand upright and smelled of alcohol; your commanding officer (CO) stopped the ceremony and ordered you to be escorted to your residence; after being unable to locate you, two other officers observed you driving your vehicle out of the parking lot; from 1 to 4 November 2019—you were in an unauthorized absence (UA) status; and on 7 November 2019—you admitted yourself into a second alcohol rehabilitation program. The CG determined that your actions violated UCMJ, Article 86 (unauthorized absence), Article 90 (willfully disobeying a superior commissioned officer), Article 92 (failure to obey order or regulation), Article 112 (drunk on duty), Article 112 (incapacitation for duty from drunkenness), and Article 113 (drunken operation of a vehicle).

The Board also noted that the BOI unanimously found that the preponderance of evidence substantiated the allegations of substandard performance and misconduct, in part. Specifically, the evidence provided supported violations of UCMJ, Article 90, Article 112, and Article 133. The BOI members also determined that the findings did not warrant your separation from service and recommended your retention in the Marine Corps.

The Marine Corps Legal Support and Administration Manual (LSAM) provides that a report must be generated in all cases where the General Court Martial Convening Authority (GCMCA) determines that the officer committed misconduct. Officer misconduct must be reported to CMC (JPL) if a Marine officer is: alleged, suspected, or reported to have committed misconduct for which NJP, court-martial, civilian prosecution, or a recommendation to CMC (JPL) for administrative discharge proceedings is possible under existing statutes and regulations. While minor traffic offenses need not be reported, all driving under the influence (DUI) or driving while intoxicated (DWI) allegations must be reported. “[Note: This is intended to be a low threshold.]” The Board determined that the CG, █ as the GCMCA determined that you committed misconduct as documented in your ROM. The CG’s determination was based upon sufficient evidence to his satisfaction and he properly documented your misconduct as required by the LSAM.

Concerning your claim that your misconduct was more a medical issue than administrative or legal in nature, the Board substantially concurred with the AO that while your misconduct was related to the effects of excessive alcohol consumption, there is no evidence that you were not responsible for your behavior. The Board noted that there is evidence that you were diagnosed with an alcohol use disorder. The Board, however, determined that there is no evidence of another mental health condition that would have mitigated your misconduct or warranted a referral for evaluation.

Concerning your contentions related to unsubstantiated allegations, the Board determined that the allegations for which you were required to show cause are a matter of official record. The Board noted that 10 U.S.C. § 1182 provides that BOI’s are convened “to receive evidence and make findings and recommendations as to whether an officer . . . on active duty should be retained on active duty.” The Board also determined that the BOI was convened solely to determine your suitability for continued service on active duty, the fact that the BOI did not substantiate all of the allegations and that the Deputy Commandant, Manpower and Reserve

Affairs (DC, M&RA) accepted the BOI findings and terminated your proceedings is not a basis to remove or to redact your derogatory material.

In consideration of the totality of your evidence, the Board determined that your misconduct was properly documents and supported by a preponderance of the evidence. Moreover, as the Show Cause Authority for the Marine Corps, the DC, M&RA reviewed the Report of BOI and directed the closure of your case and that the adverse material be included in your Official Military Personnel File (OMPF). 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,

6/23/2022

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Deputy Director

Signed by: █