



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: 2525-22
Ref: Signature Date

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Dear Petitioner:

This letter is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 23 August 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 1 June 2022 advisory opinion (AO) provided by the Headquarters Marine Corps Military Personnel Law Branch (JPL). The AO was provided to you on 14 July 2022 and although you were given 30 days in which to submit a response, you chose not to do so.

The Board carefully considered your request to remove your 9 March 2020 unit punishment book (UPB)/non-judicial punishment (NJP) and your 9 March 2020 Administrative Remarks (page 11) 6105 entry. The Board considered your contention that the █ District Court dismissed all charges as a result of an unconstitutional traffic stop, lack of evidence of excessive speed, and a malfunctioning breathalyzer. You also contend that you were punished under the incorrect Article (111) of the Uniform Code of Military Justice (UCMJ) and a fraudulent version of the UPB was included in your record with the correct UCMJ Article (113) but containing signatures and handwriting that are not yours.

The Board, however, substantially concurred with the AO. In this regard, the Board noted that you received NJP for violating Article 113, UCMJ (Drunken or Reckless Operation of a Vehicle) for being arrested and charged with Driving While Impaired (DWI) and speeding. The Board also noted that you acknowledged your Article 31, UCMJ Rights, you accepted NJP, certified that you were given the opportunity to consult with a military lawyer, acknowledged your right to appeal, and you elected not to appeal your commanding officer's (CO's) finding of guilt at

NJP. The Board determined that your NJP was conducted pursuant to the *Manual for Courts-Martial* (MCM) (2019 ed.). The Board also determined that your CO acted within his/her discretionary authority and there was sufficient evidence for the CO to find you guilty at NJP. Moreover, as explained in the AO, the outcome of your civil court proceedings does not invalidate your NJP.

In addition, the Board noted that pursuant to the Marine Corps Separation and Retirement Manual (MARCORSEPMAN) you were issued a page 11 entry regarding your NJP. You acknowledged the entry and elected not to make a statement. The Board determined that the page 11 entry was written and issued according to the MARCORSEPMAN. Specifically, the entry provided written notification concerning your deficiencies, specific recommendations for corrective action, where to seek assistance, the consequences for failure to take corrective action, and it afforded you the opportunity to submit a rebuttal.

Concerning your contention that you were charged under the wrong Article of the UCMJ, the Board considered the evidence you furnished and noted the change from “111” to “113” in the UPB and Page 11 entry. However, the Board again concurred with the AO that the correction did not affect the underlying elements of the offense and would not have changed your CO’s finding of guilt. More importantly, concerning your contention that the UPB in your record contains fraudulent signatures, the Board determined that your evidence was insufficient to conclude that the signatures were fraudulent. The Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. The Board found your evidence insufficient to overcome this presumption. Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting setting aside the NJP or removing the associated page 11 entry. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

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 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,

9/15/2022

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Executive Director

Signed by: 