



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

██████████
Docket No. 3242-22
Ref: Signature Date

██████████
██████████
██████████
██████████

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 21 July 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.

On 21 November 2019, you underwent non-judicial punishment (NJP) for receiving a ticket on 16 October 2020 for violating Article 87a (Resistance, flight, breach of arrest, and escape) of the Uniform Code of Military Justice (UCMJ) for fleeing apprehension from a ██████████ ██████████ police officer on 3 November 2019. Your commanding officer (CO) found you guilty of the offense and you were awarded forfeiture of pay. Your CO also issued you a 6105 (Page 11) counseling entry on 21 November 2019 for violating Article 92 of the UCMJ by driving in a reckless manner (98 MPH in a 55 MPH zone). You subsequently received an adverse fitness report; with an 'A' mark for "Judgment."

The Board carefully considered your request to remove from your official military personnel file the Unit Punishment Book entry denoting the NJP and the Page 11 entry and to restore your forfeited pay. You contend that the ██████████ District Court dismissed the reckless driving charge and reduced your ticket to speeding 70 mph in a 55 mph zone and you were subject to NJP and the Page 11 prior to the court verdict. You further contend that as this was your first offense, the punishment awarded was unjust and prevented you from promoting to gunnery sergeant for the fiscal year (FY) 2020 and 2021 promotion boards.

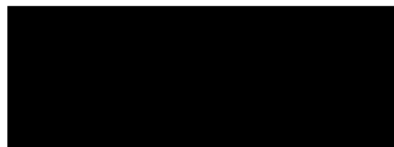
The Board noted a civilian court dismissal and the actions of the Marine Corps are separate and distinct and neither is dependent upon the other for legitimacy. Based on the known facts, your CO determined that you violated Articles 87a and 92 of the UCMJ. MCO 1900.16 states that it is the CO's discretion of whether to issue a formal counseling; consequently, a state court conviction is not required. The Board further noted that you voluntarily accepted NJP and you chose not to appeal the imposition of NJP, nor did you submit a rebuttal to the Page 11. Finally, the Board took notice of the reviewing officer's comment in Section K of the adverse fitness report covering the period 1 July 2019 to 21 November 2019, in which the RO stated, "SSgt Harp took full accountability of his actions."

The Board determined that the evidence provided does not overcome the presumption of regularity to prove that the actions taken in your case, to impose NJP, issue a Page 11 and fitness report were improper. The Board thus concluded that your NJP, Page 11, fitness report do not constitute a material error or injustice warranting removal from your record. The Board further determined that the punishment awarded, forfeiture of pay, was authorized and not unjust.

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, _____

8/11/2022

A large black rectangular redaction box covering the signature of the Deputy Director.

Deputy Director

Signed by: _____