



31 of the UCMJ, given the opportunity to consult with a military lawyer, and advised of your right to demand trial by court-martial in lieu of NJP. You agreed to plead guilty and accept NJP, and you were advised of your right to appeal the NJP. As punishment, you were awarded forfeiture of \$2310.00 pay per month for two months, which was suspended for 1 month unless sooner vacated. On 1 May 2020, you were issued a 6105 entry counseling you for violating Article 92, of the UCMJ. You were also issued a non-recommendation for promotion counseling entry. You acknowledged (signed) both entries and chose not to submit a rebuttal. The Board noted that the CO issued the counseling entry as a result of the NJP. The Board further noted that the issuing officer, using a preponderance of the evidence standard, was well within his discretionary authority to issue the counseling entry.

With regard to your contention that the NJP was double jeopardy because you were convicted by a civilian court, the Board substantially concurred with the AO and determined that you were NJP'd for failure to report the driving under the influence conviction to your chain of command or to the DODCAF. Further, the Board noted that in accordance with the Manual for Court Martial, your CO has the authority to set aside the NJP and chose not to exercise this authority. Accordingly, the Board concluded that there is no probable material error or injustice warranting removal of your NJP or associated counseling entries from your record.

The Board did not consider your request to remove your fitness report for the reporting period 1 July 2019 to 1 May 2020, because you have not exhausted available administrative remedies by petitioning the Marine Corps Performance Evaluation Review Board (PERB) prior to petitioning this Board.

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,

12/15/2022

