

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

> Docket No. 4690-22 Ref: Signature Date



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 applications on 19 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 applications, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies.

The Board carefully considered your request to remove your 7 November 2019 Administrative Remarks 6105 (Page 11) counseling entry. The Board considered your contention that you were not convicted of operating a motor vehicle while impaired. The Board also considered your request that your reenlistment code be change in order to submit a reenlistment package.

The Board noted that you received the 6105 counseling for violation of Article 113 of the Uniform Code of Military Justice (UCMJ) based on a citation you received on 29 September 2019 for operating a motor vehicle while driving under the influence and a subsequent conviction on 5 November 2019. The Board determined that the issuing officer was well within his discretionary authority to issue the counseling entry based on evidence that you plead guilty to the offense and were sentenced to one year of probation. While the Board noted that on 5 November 2020, the court later expunged the conviction from your record after you had satisfactorily completed the probation period, the Board determined that this does not support your contention that you were not convicted of the misconduct. Therefore, the Board concluded that your commanding officer's determination to issue you the 6105 counseling was based upon a preponderance of the evidence that supported a finding that you violated Article 113 of the UCMJ. Accordingly, the Board concluded that there is no probable material error or injustice

with the 6105 counseling entry. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Regarding your request to change your reenlistment code, the Board noted that you did not provide any evidence that you have been assigned a restricted reenlistment code or denied reenlistment. As such, the Board found that this issue was not yet ripe for Board consideration. Should you be denied reenlistment or be assigned a restricted reenlistment code at a later date, you may resubmit an application to the Board with supporting evidence of error or injustice.

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,