



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

██████████
Docket No. 4968-22
Ref: Signature Date

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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 application on 23 August 2022. The names and votes of the members of the panel will be furnished upon request. Your allegations of 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 29 June 2022 decision by the Marine Corps Performance Evaluation Review Board (PERB), and the 3 March 2022 advisory opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30). The PERB decision and the AO were provided to you on 29 June 2022, and although you were given 30 days in which to submit a response, you chose not to do so.

The Board carefully reviewed your request to remove your 6 August 2020 unit punishment book (UPB)/non-judicial punishment (NJP) and your fitness report for the reporting period 24 July 2020 to 6 August 2020. The Board considered your contention that you received NJP for driving under the influence (DUI), however, the ██████████ District Attorney dismissed the charge without prejudice citing irregularities in the breathalyzer process and the Base Magistrate reinstated your full driving privileges. Because the case was dismissed, you assert that you should not continue to be punished.

The Board, however, substantially concurred with the AO that your NJP and fitness report are valid and should be retained as filed. In this regard, the Board noted that you were arrested and charged with DUI, you appeared before the Base Magistrate, and pled guilty to DUI and failing to maintain the lane of travel. The Board also noted that you received NJP for violating Article 113, Uniform Code of Military Justice (UCMJ), for physically controlling a vehicle with a blood

alcohol concentration equal to or in excess of the applicable limit. The Board noted, too, that you acknowledged your Article 31, UCMJ Rights, you accepted NJP, certified that you were given the opportunity to consult with a military lawyer, you acknowledged your right to appeal, and elected not to appeal your commanding officer's (CO's) finding of guilt.

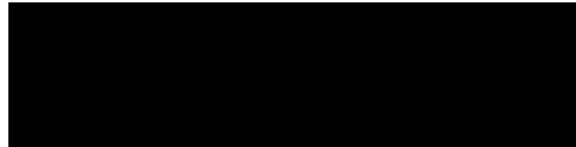
The Board considered the civil court documents you furnished, however, the Board determined that your NJP was conducted pursuant to the *Manual for Courts-Martial* (MCM) (2019 ed.). The Board also determined that your CO acted within his/her discretionary authority and there was sufficient evidence for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

Concerning the removal of your contested fitness report, the Board noted that the adverse nature of your fitness report was based upon your NJP for violating Article 113, UCMJ and the civil court proceedings were not referenced in your fitness report. The Board also noted that you acknowledged the adverse nature of the fitness report and you elected not to make a statement. The Board determined that your admission of guilt and election not to submit a statement indicates that you fully understood the basis for adversity. As such, 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,

9/13/2022

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Deputy Director

Signed by: 