



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. 4988-22
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 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 29 June 2022 decision by the Marine Corps Performance Evaluation Review Board (PERB), and the 23 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. Although you were given 30 days in which to submit a response, you chose not to do so.

This Board previously denied your request to remove the Uniform Code of Military Justice (UCMJ) Article 119 charge from your 17 September 2019 NJP and remove or modify the associated page 11 entry.

The Board carefully considered your request to modify your fitness report for the reporting period 18 June 2019 to 17 September 2019 by removing the Article 119b UCMJ reference in Section I. The Board considered your contention that you were found guilty of violating Article 113, UCMJ (drunk and reckless operation of a vehicle) by █ however, you were not charged with child neglect. For this reason, you also contend that you should not have been found guilty at non-judicial punishment (NJP). You claim that you were advised by your Sergeant Major to accept the concurrent charges for Article 119b, UCMJ, you disagreed because you thought it to be egregious. As evidence, you furnished civil court documents.

The Board, however, substantially concurred with the PERB decision that your fitness report is valid and should be retained as filed. In this regard, the Board noted that you received NJP for physically controlling a vehicle while your blood alcohol concentration equaled or exceeded the applicable limit and for five specifications of endangering the physical health, safety, and welfare of children under the age of 16. The Board also noted the previous Board's determination that based upon the elements contained in the *Manual for Courts-Martial* (MCM) (2019 ed.), the violation of Article 119b was supported by a preponderance of the evidence based on your impaired driving. In making this finding, the Board considered that you did not provide any evidence refuting the presence of a child in the vehicle at the time of your drunk driving offense. As such, the Board concurred that your NJP is valid, your NJP was conducted pursuant to the MCM, your CO was not bound nor limited by the outcome of your civil court proceedings, the misconduct was appropriately documented in your fitness report. As a result, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting modification or removal of the report. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

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,

9/20/2022

