



**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: 5623-22

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 16 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.

The Board carefully considered your request to remove your 14 May 2020 unit punishment book (UPB)/non-judicial punishment (NJP). You also request an Enlisted Remedial Selection Board (ERSB) for fiscal year (FY) 2021 through FY 2023. The Board considered your contention that the findings and determination at NJP were unjust. You were not the only Marine to have their detail dropped from the range yet you were the only one to receive NJP for that reason. You also contend that you were seeking medical assistance for your hearing loss, you could not and did not hear the alarm, you have since been fitted with hearing devices, and you require a physical alarm with vibration attached to your body to wake up. You claim that your commanding officer (CO) would not speak with you before the NJP to allow you to explain that it was not an inability to wake to an alarm or a lack of sleep hygiene that prevented you from waking. You assert that the punishment was not justified given your medical state, and the NJP has directly impacted your career and promotions. You also assert that you did not appeal the NJP due to the command climate, fear of retaliation, and you were not aware of the possibility to dispute the NJP by submitting a DD 149. As evidence, you furnished medical documents.

The Board, however, determined that your NJP is valid. In this regard, the Board noted the you received NJP for violating Uniform Code of Military Justice (UCMJ) Article 86 (unauthorized absence) and Article 92 (failure to obey order or regulation) for being absent from Range 116A as the Staff Non-Fire and failing to perform your duties as the Staff Non-Fire resulting in 41 Marines being dropped from the rifle range. The Board also noted 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 you did not appeal your commanding officer's (CO's) finding of guilt at NJP.

The Board found no evidence of a hostile command climate or evidence that your appeal would have resulted in retaliation and you provided none. While the Board considered the medical evidence you furnished, the Board determined that the documentation was insufficient to conclude that your NJP was unwarranted. In addition, despite your arguments that the CO would not speak to you prior to the NJP hearing, the Board determined that you were afforded the required due process and had the opportunity, during NJP, to submit matters in mitigation of your conduct. The Board further determined that as the fact-finding body during NJP, your CO was authorized to consider all matters, weigh the facts based on a preponderance of evidence and award punishment. Moreover, the Board found that your CO acted within his discretionary authority and conducted your NJP pursuant to the *Manual for Courts-Martial* (2019 ed.). Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the UPB/NJP from your record. Based on this determination and pursuant to the Marine Corps Enlisted Promotions Manual, the Board found no basis for an ERSB. 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,

8/25/2022

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Executive Director  
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