



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. 6370-22
Ref: Signature Date

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Dear █:

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 21 February 2023. 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 the 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 28 October 2022 Advisory Opinion (AO provided by █ and your response to the AO.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully considered your request to remove the following from your official military personnel file (OMPF): 1) Report of Misconduct (ROM) dated 13 August 2021 and associated civilian conviction documents, to include your acknowledgment and response dated 24 August 2021; and 2) your Administrative Remarks (Page 11) entry dated 23 August 2021, which includes your arrest for driving while intoxicated and the formal investigation that determined you attempted to impersonate an officer by taping a photocopy a senior officer's name on your training request. The Board considered your contentions that the adverse material unjustly contains alcohol-related details of an incident that has since been dismissed and expunged by the competent legal authority of the █ and civilian court judge, and the documents used in the formal command investigation unjustly contain the description of punitive articles that were not corroborated by the evidence submitted by the investigating officer who conducted the investigation. You believe the derogatory material impairs your

competitiveness of your naval record. You provided documentation from the [REDACTED] [REDACTED] confirming the expungement of your records in support of your contentions.

The Board, however, substantially concurred with the AO that the ROM, associated material, and your acknowledgement and response, are in accordance with the Legal Support and Administration Manual (LSAM) and Officer Administrative Separations (SECNAVINST 1920.6D) guidance. In this regard, the Board noted that, in accordance with LSAM guidance, the General Court Martial Convening Authority (GCMCA) is not bound by the actions of military or civilian court and, therefore, determined that inclusion of adverse material relating to your civilian conviction in your OMPF was at the discretion of the GCMCA. Furthermore, the Board noted that although your civilian record has been expunged of all matters relating to your alcohol-related incident, you did not provide evidence to prove your innocence of the charge or that your arrest or conviction were erroneous or unjust. In the Board's opinion, the fact your civilian charges were ultimately dismissed was insufficient evidence that you did not commit the misconduct since criminal charges may be dismissed for many different reason. The Board thus concluded that your evidence is insufficient to warrant relief and that there is no probable material error, substantive inaccuracy, or injustice warranting removal of your ROM and associated material from your OMPF.

With regards to your request for removal of the Page 11, the Board noted that a Page 11 is given a presumption of regularity, which requires you to provide sufficient evidence that the CO's decision was unjust or was materially in error. The Board determined that you provided insufficient evidence to rebut this presumption of regularity. In this regard, the Board took into consideration your contentions and your response to the AO; however, determined that the Page 11 was factual at the time of issuance and your CO was within his discretion to issue the counseling entry. Specifically, the Board determined that the CO is best situated to determine the extent and basis for your misconduct, which was based on your arrest and a formal command investigation inquiring into your attempt to impersonate an officer, and issuing you the Page 11 was an appropriate course of action for the CO to counsel you that such conduct was unacceptable. As such, the Board concluded that your evidence is insufficient, and that there is no probable material error, substantive inaccuracy, or injustice warranting removal of your Page 11 from your OMPF. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

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 the 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,

3/11/2023

