



**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. 7098-22  
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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 31 January 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 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 28 November 2022, advisory opinion (AO) furnished by the Marine Corps Military Personnel Law Branch (JPL). The AO was provided to you on 2 December 2022, and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

The Board carefully considered your request to remove your 17 February 2017 unit punishment book (UPB)/non-judicial punishment (NJP), associated Administrative Remarks (page 11) entries, and fitness report for the reporting period 2 February 2017 to 17 February 2017. The Board considered your contention that the NJP, page 11 entries, and associated fitness report should be removed because of improper submission of information and authorizations. Specifically, the blood alcohol concentration (BAC) reflected 12 instead .12, and no BAC was conducted, only a breath alcohol concentration (BrAC) which measures blood ethanol content. You also contend that according to the Manual for Courts-Martial (MCM) (2019 ed.), "If authorized by regulations of the Secretary concerned, an officer in charge (OIC) may impose NJP upon enlisted members assigned to the unit of which he is in charge. . ." You further contend that the officer that imposed NJP, was not the commanding officer (CO) as the page 11

entry states. You claim that although appointed as the OIC according to the unit's table of organization and equipment (TO&E), the TO&E does not state OIC as the MCM references. You also claim that a Freedom of Information Act (FOIA) request revealed that there was no formal letter of authorization, designating the officer as the OIC or granting him NJP authority. You explained that your unit, the ██████████ fell under the ██████████ and would require their authorization/NJP authority.

The Board noted that you received NJP for violating Article 111, Uniform Code of Military Justice (UCMJ) for the drunken operation of a vehicle. The Board also noted that you acknowledged your Article 31, UCMJ Rights, accepted NJP, certified that you were given the opportunity to consult with a military lawyer, acknowledged your right to appeal, and you elected not to appeal your CO's finding of guilt at NJP.

The Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a 6105 page 11 entry documenting your NJP. On the same date, you were issued a page 11 not recommending you for promotion due to your recent NJP. The Board also noted that you acknowledged the entries and elected not to make a statement.

The Board substantially concurred with the AO that the "12" BAC indicated on the UPB is a scrivener's error. The Board determined that the error is not material to the underlying basis for your NJP, nor were you prejudiced by the error. The Board also determined that a delegation of authority was not required for the OIC of ██████████ to impose NJP. As noted in the response to your FOIA request, the Judge Advocate General of the Navy has granted OICs (as identified in a table of organization) the authority to conduct company level NJP and the ██████████ was structured to meet that requirement prior to the officer's term as the OIC. Accordingly, the Board found no error regarding the conduct of your NJP. The Board further determined that the OIC had the authority to impose NJP, the OIC did not require additional authority from the ██████████, and your NJP was conducted pursuant to the *Manual for Courts-Martial* (2016 ed.).

The Board noted that your page 11 entries indicate CO instead of OIC and determined that this is also a scrivener's error and does not constitute a material error warranting removal of your page 11 entries. The Board also determined that as the OIC, ██████████, he had the authority to issue and sign your page 11 entries. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action.

Concerning your request to remove your fitness report for the reporting period 2 February 2017 to 17 February 2017, the Board determined that you have not exhausted your administrative remedies. The Performance Evaluation Review Board (PERB) is the initial action agency for fitness report appeals, therefore, according to the Marine Corps Performance Evaluation Appeals Manual, you must submit your request to the PERB.

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,

2/12/2023

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Executive Director

Signed by: █