



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

██████████
Docket No. 8120-22
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF ██████████
XXX XX ██████/█████ USMC

Ref: (a) 10 U.S.C. § 1552
(b) JAGINST 5800.7G

Encl: (1) DD Form 149 w/attachments
(2) Letter of Reprimand, 30 Sep 21
(3) Rebuttal to Letter of Reprimand, 6 Oct 21
(4) Advisory opinion by HQMC (JPL), 31 Jan 23

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that her naval record be corrected by removing enclosures (2) and (3).

2. The Board, consisting of ██████████, ██████████, and ██████████ reviewed Petitioner's allegations of error and injustice on 7 February 2023 and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval records, and applicable statutes, regulations, and policies.

3. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, found as follows:

a. On 30 September 2021 Petitioner was issued a Letter of Reprimand (LOR). The LOR noted that the ██████████ Highway Patrol ██████████ initiated a traffic stop while Petitioner drove at a high rate of speed on 5 May 2021 at approximately 0154. During the traffic stop, a ██████████ Officer administered a series of field sobriety tests which showed a suspicion of intoxication. Following the conduct of multiple field sobriety tests, Petitioner provided two breath samples. The preliminary alcohol screening device yielded a blood alcohol content of .136 percent and .130 percent. The ██████████ Officer then placed Petitioner under arrest for misdemeanor driving under the influence. A blood sample taken after the arrest yielded a blood alcohol content of .125 percent. Petitioner acknowledged the LOR, indicated that she did not intend to appeal the LOR. Enclosure (2).

b. In Petitioner's statement, she noted that she had dinner and two drinks. She thought she waited a sufficient amount of time, and drank plenty of water before she began driving. Enclosure (3).

c. In Petitioner's application, she contends that she was found not guilty at non-judicial punishment (NJP), a LOR is accompanied by NJP, her case in civil court was adjudicated on 21 October 2022, and she was found not guilty of driving under the influence, and was charged with reckless driving. Enclosure (1).

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d. The advisory opinion (AO) furnished by the Military Personnel Law Branch (JPL) recommended that Petitioners request be granted. The AO explained that, a reprimand is a form of censure, which may be punitive or non-punitive. A non-punitive letter will be kept as a personal matter between the service member and the superior issuing the non-punitive letter. The AO also explained that a reprimand issued at NJP is punitive and in this case, the LOR is written to correspond with the requirements of a punitive letter of reprimand according to reference (b). The AO noted that Petitioner's record does not contain a Unit Punishment Book entry, nor any documentation that would infer that NJP occurred. The AO determined that the LOR was presumably non-punitive and in accordance with reference (b), the LOR should not have been entered into Petitioner's record. The AO concluded that Petitioner overcame the presumption of regularity and met her burden to demonstrate the existence of a material error or injustice in her record. Enclosure (4).

CONCLUSION

Upon review and consideration of all the evidence of record, the Board found sufficient evidence of an error or injustice warranting relief.

In this regard, the Board substantially concurred with the AO. The Board noted that the LOR was written in a punitive format according to reference (b). The Board also noted that a LOR is the result of punitive action and Petitioner's record contains no evidence that she received NJP. The Board concluded that the LOR and associated rebuttal shall be removed.

RECOMMENDATION

In view of the above, the Board recommends the following corrective action:

Petitioner's naval record be corrected by removing enclosures (2) and (3).

Any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record, and that no such entries or material be added to the record in the future. This includes, but is not limited to, all information systems or database entries that reference or discuss the expunged material.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above-entitled matter.

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

Sincerely,

3/2/2023

[REDACTED]

Deputy Director

Signed by: [REDACTED]