



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

██████████
Docket No. 8430-22
Ref: Signature Date

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Dear Petitioner:

This letter is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 3 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.

The Board carefully considered your request to remove your unit punishment book (UPB) entry, which documents your 6 October 2022 nonjudicial punishment (NJP) and 21 October 2022 denial of your appeal. You also request reimbursement of the forfeiture of pay and reinstatement to Lance Corporal (LCpl). The Board considered your contention that you were wrongfully lied to by your chain of command and coerced against your rights to accept NJP. The Board also considered your claim that, although you plead "not guilty" at office hours, you were found guilty with a lack of evidence.

The Board noted that, on 6 October 2022, you received NJP for violation of the Uniform Code of Military Justice (UCMJ), Article 113 (drunken operation of a vehicle). Specifically, on or about 3 September 2022 you were stopped by the officer of the day for driving under the influence of alcohol. You were advised of your rights under Article 31, UCMJ, given the opportunity to consult with a military lawyer, and advised of your right to demand trial by court-martial in lieu of NJP. You agreed to accept NJP and you were advised of your right to appeal. As punishment, you were reduced to Private First Class (PFC), awarded forfeiture of \$1027.00 pay per month for two months, and given restriction and extra duty for 45 days to run concurrently, without suspension. On 6 October 2022, you were issued an Administrative Remarks (Page 11)

6105 entry counseling you for violating Article 113, UCMJ. You were also issued a Page 11 promotion-restriction entry. You acknowledged (signed) both entries and chose not to submit a written rebuttal.

With regard to your contention that the NJP was wrongful as well as your claims that you were lied to by your chain of command, coerced against your rights to accept NJP, and found guilty with a lack of evidence, the Board determined that you provided insufficient evidence to support these contentions. Further, the Board noted that your CO's determination was based upon a preponderance of the evidence and he was well within his discretionary authority to issue the counseling entry. Moreover, the Board noted that your Commanding Officer has the authority to set aside the NJP and chose not to exercise this authority. Accordingly, the Board concluded that there is no probable material error or injustice warranting removal of the UPB entry or NJP from your record, or the reinstatement to the grade of LCpl.

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 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,

1/30/2023

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Deputy Director

Signed by 