



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. 8983-22
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 20 December 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 17 December 2021 unit punishment book (UPB)/non-judicial punishment (NJP) and associated Administrative Remarks (page 11) entries. The Board considered your contention that you received NJP prior to being convicted in civil court and that your civil case was dismissed on 19 September 2022.

The Board noted that you received NJP for violating Uniform Code of Military Justice (UCMJ) Articles 113 and 92 for the drunken operation of a vehicle, physically controlling a vehicle in a reckless manner by going 68 miles per hour over the posted speed limit. You were awarded reduction in grade to E-4, forfeiture of pay and restriction. 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 commanding officer's (CO's) finding of guilt at NJP. The Board found no error regarding the conduct of your NJP and determined that your NJP was conducted pursuant to the *Manual for Courts-Martial* (2019 ed.). The Board also determined that your CO acted within his discretionary authority, and found you guilty based upon a preponderance of the evidence.

The Board also noted the civil court Petition and Order of Expunction. The Board, however, determined that your CO was not prohibit from imposing NJP prior to your civilian court proceedings. The Board also determined that the standard of proof by which facts must be established at NJP is a "preponderance of the evidence," rather than "beyond a reasonable doubt," as it is in a civil court case. Therefore, the court's eventual dismissal of your case is not binding on your CO's authority to impose NJP, and does not invalidate your NJP. The Board, thus, concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action.

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,

1/6/2023

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Deputy Director

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