



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. 9145-22
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 7 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 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.

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 for reinstatement on active duty, entitlement to back pay and allowances from your date of separation, and promotion to first lieutenant (1stLt/O-2). The Board considered your statement and contentions that you were originally charged with driving under the influence (DUI), but you were ultimately charged with reckless driving, and granted deferred adjudication. You argue that: 1) the administrative discharge misrepresented your culpability, it misrepresented the underlying reason for your arrest, used a basis that was incorrect, and misrepresented the findings of the civilian court, 2) the notification letter stated both "Substandard Performance of Duty" and "Misconduct" as the basis for the discharge, but the DD 214 indicates that the ultimate basis for separation was misconduct. Because the

notification letter provided an incorrect basis for separation, your separation was in error, 3) your conviction was a first offense and constituted a civil infraction, not a misdemeanor crime. Because it is a civil infraction, it could not be a reason for arrest and your arrest was solely for the suspicion of DUI, for which you were never convicted, and 4) your separation was also an injustice because the separation was far too harsh of a consequence for your actions and you were subjected to disparate treatment compared to others that had similar or far more serious offenses.

The Board noted that you were arrested for suspicion of DUI of alcohol. You received non-judicial punishment (NJP) for violating Article 92, Uniform Code of Military Justice by violating Marine Corps Order (MCO) 5300.17A. On 16 March 2020, the same officer that imposed NJP, set-aside your NJP because the MCO charged at NJP was non-punitive, therefore, it could not be used to support an orders violation. The Board also noted that the Commandant of the Marine Corps (CMC) endorsed and submitted a Report of Misconduct (ROM) and Recommendation for Administrative Separation to the Principal Deputy, Assistant Secretary of the Navy (Manpower & Reserve Affairs) (ASN M&RA), who approved your separation.

The Board determined that your ROM was properly prepared and submitted according to the Marine Corps Legal Support and Administration Manual, as a result of your misconduct while still in a probationary status. The Board noted that pursuant to the Manual of the Judge Advocate General, your arrest and conviction for a civil offense constituted officer misconduct and your commanding officer was required to report to the CMC (JAM). The Board also noted that a ROM is required in all cases of misconduct where the first General Court Martial Convening Authority in the chain of command determines that the officer committed the misconduct. In addition, a ROM is required even in cases where the officer pleads to a lesser offense, receives a deferred prosecution, receives a probation in judgment, and participates in a court-sanctioned diversionary program that permits the subsequent dismissal of the charge, or similar cases. Based on the circumstances of your case, the Board also determined that you failed to maintain required standards of professional and personal conduct. Therefore, the Board found that the CMC acted properly and was authorized to process you for administrative separation. Moreover, the ASN M&RA on behalf of the Secretary of the Navy, acted within her discretionary authority when approving your administrative separation.

The Board noted your assertions of disparate treatment, however, the Board is not an investigative agency, considers each case on its merits, and relies on a presumption of regularity to support the official actions of public officers. In the absence of substantial evidence to the contrary, the Board will presume that they have properly discharged their official duties. In consideration of the totality of your evidence, the Board found it insufficient to overcome this presumption. As a result, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

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,

3/21/2023

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Executive Director

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