



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

█  
Docket No. 9330-22  
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 14 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 as well as the 31 January 2023 advisory opinion (AO) furnished by the Marine Corps Military Personnel Law Branch (JPL), and your response.

The Board carefully considered your request to remove your 12 October 2021 unit punishment book (UPB)/non-judicial punishment (NJP), and fitness report for the reporting period 14 August 2021 to 12 October 2021. The Board considered your contention that the only evidence to support your NJP is your self admittance, and the traffic citation that is no longer admissible in a court of law. You stated that you were arrested for being suspected of driving under the influence (DUI) on 29 May 2021, you reported the arrest to your command, and accepted NJP. You assert that your motion to suppress the evidence was granted due to lack of probable cause for your arrest on 24 May 2022, and your case was dismissed on 20 July 2022. In addition, you claim that your driving record does not reflect a DUI charge. As evidence, you furnished civil court documents.

The Board noted that you received NJP for violating Article 113, Uniform Code of Military Justice (UCMJ) for the drunken or reckless operation of a vehicle. The Board also noted that you pled guilty, 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 did not appeal the Commanding General's (CG) finding of guilt at NJP.

The Board substantially concurred with the AO that your NJP is valid. In this regard, the Board noted that you admitted to operating a vehicle while under the influence of alcohol. The Board also noted that Article 15 is an administrative disciplinary proceeding, with the purpose of determining whether an offense was committed by the member and, if appropriate, to provide punishment. The Board determined that NJP is not a criminal proceeding, thus the burden of proof at NJP is a preponderance of the evidence and your admission as validated by your traffic ticket constituted sufficient evidence for the CG to impose NJP. Moreover, the fact that the County dismissed the charges against you has no bearing on the CG's authority to impose NJP, nor does it invalidate the NJP. Accordingly, the Board found that your NJP was conducted pursuant to the *Manual for Courts-Martial* (2019 ed.).

Concerning your request to remove your fitness report for the reporting period 14 August 2021 to 12 October 2021, 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,

2/16/2023

