



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

██████████  
Docket No. 164-23  
Ref: Signature Date

██  
██  
██

Dear ██████████

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 18 April 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 13 January 2023 Advisory Opinion (AO) provided by Navy Personnel Command (PERS-32) and the 23 January 2023 AO provided by the Office of Legal Counsel (BUPERS-00J). Although you were afforded an opportunity to submit a rebuttal to the AOs, you chose not to do so.

The Board carefully considered your request to remove from your record the 10 November 2021 nonjudicial punishment (NJP), the Special/Regular Evaluation Report & Counseling Record (Eval) for the reporting period 16 November 2021 to 29 November 2021, and the Page 13, Administrative Remarks dated 9 December 2021. The Board considered your contention that you were found not guilty in a civilian court of Driving Under the Influence after NJP was imposed.

The Board, however, substantially concurred with the BUPERS-00J AO. In this regard, the AO noted that military and state justice systems are separate and concurrent jurisdictions and each retains the independent prerogative to charge and try members. Because each system has independent jurisdiction, they may reach differing conclusions. Further, the AO notes that the Commanding Officer found sufficient evident to find you guilty of Article 113 (Drunken or Reckless Operation of a Vehicle) at NJP. The fact that the ██████████ court dismissed the DWI charge and found you guilty of the lesser offense of reckless driving does not negate the CO's

finding at NJP. Thus, the Board determined that your CO had sufficient evidence, acted within his discretionary authority, and conducted your NJP pursuant to the Manual for Courts-Martial (2019 ed.).

In regards to your claim that the adverse Eval will impede your career progression, the Board determined that this is conjecture that the Board simply could not validate.

Moreover, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. The Board found your evidence insufficient to overcome this presumption. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the NJP, the adverse fitness report that is based on the NJP, or the Page 13 that documents the NJP. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

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,

5/12/2023

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Deputy Director

Signed by: 