



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

██████████
Docket No. 229-23
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 applications 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 applications, 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 to remove your 16 November 2019 unit punishment book (UPB)/non-judicial punishment (NJP), your 16 November 2019 6105 and Page 11 counseling entries, and your fitness report for the reporting period 1 April 2019 to 16 November 2019. The Board considered your contention that there was a misunderstanding of the facts pertaining to the incident which led to an unjust punishment that you did not instigate. As evidence, you provided correspondence from your former commanding officer (CO) who imposed NJP, as well as character statements.

The Board noted that you received NJP for violating Uniform Code of Military Justice (UCMJ) Article 134 for drunk and disorderly conduct. The Board also noted that you acknowledged your Article 31, UCMJ Rights, you accepted NJP, certified that you were given the opportunity to consult with a military lawyer, you acknowledged your right to appeal, and elected not to appeal

your CO's finding of guilt at NJP. The Board determined that your NJP is valid and conducted according to the *Manual for Court-Martial* (2019 ed.).

The Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN) and the Marine Corps Enlisted Promotions Manual, you were issued counseling entries for receiving NJP, violation of Article 134, UCMJ and notification that you are not recommend for promotion for six months due to your NJP. The Board also noted that you acknowledged the entries, however, you failed to make an election whether to or not to submit a statement. The Board determined that the contested counseling entries were written and issued according to regulations. Specifically, the entry provided written notification concerning your deficiencies, specific recommendations for corrective action, where to seek assistance, the consequences for failure to take corrective action, and it afforded you the opportunity to submit a rebuttal. Moreover, your commanding officer (CO) signed the entry, and he/she determined that your misconduct was a matter essential to record, as it was his/her right to do.

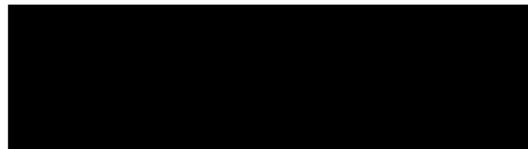
The Board noted your former CO's request to remove your NJP, the Board, however, determined that your CO's correspondence was unconvincing, and lacked sufficient evidence of facts that were not known or available for consideration at the time of the NJP.

Concerning the removal of your fitness report for the reporting period 1 April 2019 to 16 November 2019, 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, you must submit your request to the PERB according to the Marine Corps Performance Evaluation Appeals Manual. Accordingly, the Board 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,

3/1/2023



Deputy Director

Signed by: 