



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. 1799-23
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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 14 March 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.

The Board carefully considered your request to remove the 7 October 2019 Final Civil Action Report (FCAR) and associated endorsements. You also request to remove the 3 February 2020 Status in the Navy Letter. The Board considered your contention that the charge for negligent operation of a motor vehicle and failure to keep the right of way should not justify retaining the FCAR in your record for future promotion boards view. You claim that you were found not guilty for the most serious charge of operating a vehicle under the influence of alcohol. You also claim that you did not receive non-judicial punishment (NJP) and, although your promotion to O-2 was delayed, you were ultimately promoted. You believe that if the contested documents remain in your record, your military career will be unfairly affect. As evidence, you provided civil court documents.

The Board noted that pursuant to Military Personnel Manual (MILPERSMAN) 1611-010 you were issued a FCAR noting that you were pulled over for suspicion of driving under the influence of alcohol and your blood alcohol content level was .13 percent. The FCAR also noted that at your 22 July 2019 court hearing, you were found not guilty of operating a vehicle under

the influence. However, there were sufficient facts found to uphold the civil infraction of negligent operation of a motor vehicle and failure to keep right for oncoming traffic. As a result, you were fined and awarded probation for six months. The Board noted, too, that you acknowledged receipt of the FCAR and indicated that you did not desire to make a statement. The Board determined that your election not to make a statement indicates that you agreed with the content of the FCAR and the basis for its submission to the Commander, Navy Personnel Command (PERS-834). The Board determined that the FCAR was written and issued according to regulations. Specifically, the MILPERSMAN 16110-010 requires commanders to notify and to keep PERS-834 informed of the status and disposition of all misconduct cases where an officer has been arrested in connection with or charged with a civil offense—regardless of any diversionary, mitigating, or downgrading actions by the court. When a sentencing has been adjudged, the commander must submit a FCAR.

The Board noted the Status in the Navy letter notifying you that the Show Cause Authority determined that you are not required to show cause for retention. You were also notified that the Status in the Navy letter would be filed into your official record and you were afforded the opportunity to submit a response to the adverse material being inserted into your record. The Board determined that according to MILPERSMAN 1070-170, your FCAR and Status in the Navy letter were properly included in your official record. Thus, 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,

3/27/2023

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Executive Director
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