



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. 2082-23
Ref: Signature Date



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 27 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 3 March 2023 decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), and the 25 January 2023 advisory opinion (AO) provided to the PERB by the Manpower Management Division Records & Performance Branch (MMRP-30). The AO was provided to you on 3 March 2023, and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

The Board carefully considered your request to remove the fitness report for the reporting period 18 December 2015 to 1 September 2016 and the 29 July 2016 Administrative Remarks 6105 (page 11) entry. The Board considered your contentions that the Section I comments and counseling entry contain false accusations that were assumed/determined prior to your civilian court proceedings. You also contend that Section I contains comments that are unacceptable according to the Marine Corps Performance Evaluation System (PES) Manual. Specifically, the PES Manual restricts comments about pending civil actions, minor limitations, shortcomings, occasional lapses, or weakness in an otherwise overall positive performance. You claim that all charges were dropped, you were awarded probation before judgment, and the case was not adjudicated as a driving under

the influence (DUI) case. You also claim that you did not receive any marks on your driving record and insurance.

The Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a 6105 entry counseling you for an alcohol incident on 1 May 2016, specifically, driving under the influence with a blood alcohol content of 0.13 percent. The Board noted that you acknowledged the counseling entry and elected not to submit a statement. The Board also noted that pursuant to the Marine Corps Individual Records Administration Manual (IRAM), "Commanders will direct a SRB entry be made after counseling a Marine for any alcohol-related misconduct. . ." The Board determined that you were properly counseled and the contested counseling entry was written and issued in accordance with the MARCORSEPMAN. Specifically, the counseling 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 substantially concurred with the AO and PERB's decision that your fitness report is valid and should be retained as filed. In this regard, according to the District Court of Maryland civil court documents, you pleaded guilty and you were sentenced to six months' probation "before judgment." The Board determined that your plea of guilt and awarded probation constitutes a civil conviction and was properly noted as derogatory material. The Board noted that the PES Manual restricts commenting on pending civil/criminal action. However, the PES Manual does permit commenting on civil/criminal action in the reporting period, to include the results when adjudication is complete and the Marine is found accountable. The Board also noted that the adjudication of your case was complete on 8 May 2016, prior to the end of the reporting period. The Board determined that your alcohol related misconduct was accurately and properly documented in your counseling entry and fitness report. As a result, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the fitness report or 6105 entry. 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,

5/18/2023

