



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. 2388-23
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 application on 4 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.

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 requests to remove the 25 July 2022 unit punishment book/non-judicial punishment (UPB/NJP) and to restore the paygrade and pay awarded as punishment. The Board considered your contention that you received NJP before your court date and your case was dismissed. You claim that the driving while intoxicated (DWI) charge was dismissed because the police officer failed to include the breathalyzer score on the ticket and the officer poured out the liquid in the cup. As evidence, you provided your civil court documents.

The Board noted that you received NJP for violating Articles 92 and 113, Uniform Code of Military Justice (UCMJ) for failing to obey an order or regulation and driving under the influence of alcohol. The Board also noted that you 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 elected not to appeal your commanding officer's (CO's) finding of guilt at NJP. Article 113, UCMJ applies to any person subject to this chapter who— (1) operates or physically controls any vehicle, aircraft, or vessel in a reckless or wanton manner or while impaired by a substance. The Board determined that you provided no evidence that the underlying basis for the NJP was in error. The Board also determined that your CO had sufficient evidence and conducted the NJP pursuant to the *Manual for Courts-Martial* (2019 ed.).

Moreover, the Board determined that NJP is not a criminal trial; it is an administrative disciplinary proceeding with the purpose of determining whether an offense was committed and, if appropriate, to provide punishment. As such, the standard of proof by at NJP is a "preponderance of the evidence," rather than "beyond a reasonable doubt," as it is in a civil court. The Board also determined that the civil court decision has no bearing on your CO's authority to impose NJP. The Board noted, too, that according to the Legal Administration Manual, NJP may be imposed at any time before adjudication by a civilian court. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of your NJP or to restore any pay or paygrade awarded as punishment. 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,

4/11/2023

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Executive Director
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