



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. 2705-23
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 30 May 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, as well as the 21 April 2023 Advisory Opinion (AO) provided by Military Personnel Law (JPL) and your response to the AO.

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 5 May 2020 Unit Punishment Book (UPB), which documents your Nonjudicial Punishment as well as the 5 May 2021 6105 (Page 11) counseling and Promotion Restriction counseling entries. The Board also considered your request to have your original date or rank, pay and allowance reinstated. The Board considered your contention that you didn't violate any laws and you weren't charged by the civilian court in █ or █ where you were detained. The Board also considered your contention that the NJP doesn't state which order you violated and that page 2 of the NJP wasn't signed by your Commanding Officer (CO).

The Board noted that on 5 May 2021, you received NJP for Violation of Article 92, Failure to Obey an Order or Regulation, of the Uniform Code of Military Justice (UCMJ). You were advised of your rights under Article 31, UCMJ, given the opportunity to consult with a military lawyer, and advised of your right to demand trial by court-martial in lieu of NJP. You agreed to accept NJP and you were advised of your right to appeal. As punishment, you were reduced to lance corporal, and received forfeiture of \$1185 pay for two months (with one month pay suspended), and 45 days of restriction and extra duty to run concurrently.

The Board however, however, substantially concurred with the JPL AO. In this regard, the Board determined that the Marine Corps properly followed all of its procedures for awarding an NJP. You were advised of your right to refuse NJP and demand trial by court-martial in lieu of NJP, but you chose not to. You were also given an opportunity to consult counsel prior to accepting NJP. You agreed to accept NJP subject to your right of appeal, but you did not appeal.

In regards to your contention that the NJP doesn't specify the order you specifically violated, the AO notes that pursuant to para 011105 of MCO 5800.16, "it is not necessary to use model charges and specifications as in courts-martial..." Next, regarding your contention that the CO did not sign page two of the UPB, the AO notes that the UPB does not contain a signature block on the second page. Finally, regarding your contention that the UPB is erroneous because you were not charged by any legal entity in the City of [REDACTED] or [REDACTED], the Board concurred with the AO that this does not render the NJP erroneous since the UCMJ exists independently of any civilian jurisdiction and your CO maintained independent authority to dispose of any offenses falling under his jurisdiction. The Board thus determined that your Commanding Officer was well within his discretionary authority to impose NJP and insufficient evidence exists to remove it from your record.

Based on the determination that your NJP remains appropriate, your request to remove the corresponding counseling entries dated 5 May 2021 and to reinstate your original date of rank, pay, and allowances forfeited were determined to be without merit. The Board, substantially concurred with the AO and determined that the CO relied upon sufficient evidence and acted within his/her discretionary authority when deciding that your counseling entry was warranted. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of NJP and counseling entries, or reinstatement of your original date of rank and forfeited pay and allowances. 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,

6/13/2023

