



**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. 4092-23  
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.

A three-member panel of the Board, sitting in executive session, considered your application on 25 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 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 20 April 2022 and 11 May 2022 Administrative Remarks (page 11) entry and associated rebuttal statement. You also request to remove the fitness report for the reporting period 1 January 2022 to 24 March 2022. The Board considered your contention that your civil court case was expunged.

The Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a 6105 entry on 20 April 2022, counseling you for being formally charged, pleading guilty, and being convicted for operating a motor vehicle under the influence. On 11 May 2022, you were notified that you are not eligible for promotion to gunnery sergeant for twelve months due to your conviction for operating a motor vehicle while under the influence. The Board also noted that you acknowledged the entry and, in your statement, you acknowledged understanding that your integrity will be in question for not being honest. The Board determined that the contested entries were written and issued according to the Marine Corps Enlisted Promotions Manual and MARCORSEPMAN. 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 signed the entry, and he/she determined that your substandard performance/misconduct was a matter essential to record, as it was his/her right to do.

The Board noted that you pleaded guilty to operating a vehicle under the influence and you were awarded probation as a condition of your plea. The Board also noted that according to the █  
█ documents, your case came before the Court for review based upon granting a deferred judgment and because your period of probation expired and/or you successfully completed the requirements of your probation. The Board determined that pleas of guilt to a lesser offense, deferred prosecution, a probation in judgment, and participation in a court sanctioned diversionary program that permits the subsequent dismissal of the charge, or similar cases are still considered civil convictions. The Board also determined that the Individual Record Administration Manual directs commanders to make a service record entry after counseling a Marine for alcohol related misconduct. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the counseling entries from your record. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Concerning your request to remove your fitness report for the reporting period 1 January 2022 to 24 March 2022, 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.

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,

6/12/2023

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