



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. 4696-23
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 15 June 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 your 29 June 2022 non-judicial punishment (NJP), Punitive Letter of Reprimand (PLOR), and derogatory material associated with the charge for driving under the influence (DUI). You also request to remove your fitness reports for reporting periods 21 December 2021 through 29 June 2022. The Board considered that you received NJP and a PLOR for violating Article 113, Uniform Code of Military Justice (UCMJ). You claim that the █ Circuit Court found that you were not guilty for DUI, you were convicted of misdemeanor Reckless Driving (code 46.2-852) and a fine of \$1000, with no other charges. You contend that the NJP and derogatory material do not accurately reflect the conviction or incident and were prematurely adjudicated. You also contend that the fitness reports dated 21 December 2021, 31 May 2022, and 29 June 2022 either go against the Marine Corps Performance Evaluation System Manual or include inaccurate language. You also contend that the first fitness report includes lowered markings in response to the DUI incident prior to adjudication. The second fitness report is a result of your billet and duties being restricted for the DUI, although the DUI had not yet been adjudicated in civil court or at NJP. The third fitness report is adverse and includes information about the DUI that you were not convicted.

The Board noted that you received NJP for violating Article 113, UCMJ. The Board also noted that you acknowledged your Article 31, UCMJ Rights, acknowledged that you had a chance to review the evidence, and you accepted NJP. During the NJP proceedings, you acknowledged having a .20 percent blood alcohol concentration (BAC), pled guilty at NJP for violating Article 113, UCMJ, the Commanding General █ (CG, █ found you guilty, and you did not appeal the CG's finding. The Board determined that your NJP was conducted pursuant to the *Manual for Courts-Martial* (2019 ed.). In this regard, the CG, █ relied upon a preponderance of evidence that included your plea of guilty, and .20 percent BAC when imposing NJP and finding you guilty.

The Board noted the civil court decision, however, the Board determined the CG is not bound by the civil court's decision, the civil court decision does not invalidate your NJP, nor does it constitute a basis to disregard your admitted misconduct. The Board also determined that the standard of proof by which facts must be established at NJP is a "preponderance of the evidence," rather than "beyond a reasonable doubt," in a civil court trial. NJP is not a criminal trial—it is a disciplinary proceeding. Its purpose is to determine whether an offense was committed by the member, and if appropriate, to provide punishment therefore. Moreover, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. The Board found your evidence insufficient to overcome this presumption. Accordingly, given the totality of the circumstances, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting relief.

Concerning your request to remove your fitness reports for the reporting periods 21 December 2021 through 29 June 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,

6/21/2023

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