



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

█  
Docket No. 5217-23

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 13 December 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 17 October 2023 Advisory Opinion (AO) provided by the Headquarters █ and your rebuttal to the AO.

The Board carefully considered your request to set aside the non-judicial punishment (NJP), remove all associated derogatory material, and backdate your promotion to first lieutenant (1stLt) based upon the original date you would have been promoted. You also request to remove your fitness report for the reporting period 1 May 2021 to 10 June 2022. The Board considered your contention that the imposition of NJP and finding of guilt was unjust and illegal. Specifically, the civilian court deferred your sentencing as part of the Veteran's Treatment Court Program. Pursuant to paragraph 0124 of the Judge Advocate General Manual (JAGMAN), military charges will not be referred to a court-martial or be the subject of NJP proceedings for the same act or acts, except in those unusual cases where trial by court-martial or imposition of NJP is considered essential in the interests of justice, discipline, and proper administration within the naval service. In addition, federal authorities have the power to impose punishment when state authorities have acted, but that power is specifically limited by the JAGMAN because it should only be used when circumstances require. You claim that you were drugged, you did not knowingly and intentionally consume the substance that caused you to be intoxicated, and in no way chose to drive drunk. You also claim that the █ Police, as well as the Investigating Officer (IO) concluded that you had been drugged. The Board substantially concurred with the AO that your NJP was appropriate and in compliance with the applicable *Manual for Courts-Martial*. In this regard, the Board noted you received NJP for violating Article 113, Uniform Code of Military Justice (UCMJ). The Board also noted that you acknowledged your Article 31, UCMJ Rights, you accepted NJP, certified that you were given the opportunity to consult with a military lawyer, and acknowledged your right to appeal.

The Board noted the Command Investigation and your Commanding Officer's determination that there was insufficient evidence to substantiate your claim that the innocent ingestion of a substance caused you not to be responsible for your actions. The Commanding Officer further determined that there was sufficient evidence to show you were in physical control of and driving your vehicle while above the legal alcohol limit. Additionally, the Commanding General [REDACTED] determined that you clearly consumed more alcohol than one drink as demonstrated by your blood alcohol content (BAC) of 0.191 and 0.187 percent, and your BAC could not have been caused by a so-called "date rape" drug. The Board found your evidence insufficient to substantiate your claim that you were under the influence of a drug or substance other than alcohol when arrested for driving under the influence. The Board also noted the Investigating Officer's opinion regarding an illicit substance, however; the Board determined that the CG was not bound by that opinion. The Board also determined that the CG relied upon a preponderance of the evidence that included a Command Investigation, the field sobriety test, police report, and your admissions when determining that you were guilty of violating Article 113, UCMJ.

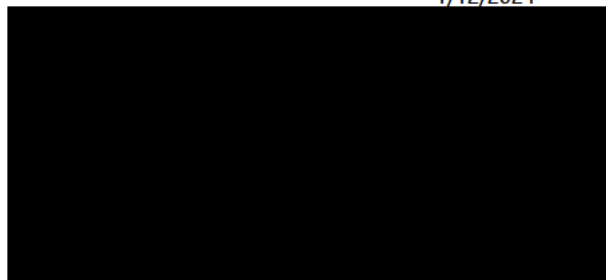
Concerning alleged violations of JAGMAN, the Board noted that the JAGMAN does not prohibit the imposition of NJP when charges for the same act has been diverted or otherwise adjudicated in a civilian court. Rather, paragraph 0124 limits NJP in such cases and requires commands to obtain permission prior to imposing NJP. The Board determined that this permission was granted and within the purview of the General Court Martial Convening Authority who imposed the NJP. Moreover, the Board relies on a presumption of regularity to support the official actions of public officers, 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. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting the setting aside of your NJP, removal of adverse documents, or the backdating of your promotion. 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, the Board determined that you have not exhausted your administrative remedies. In accordance with the Marine Corps Performance Evaluation System Manual, the Performance Evaluation Review Board (PERB) is the initial agency for fitness report appeals, therefore you must submit your request to the PERB prior to this Board taking any action on your request.

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,

1/12/2024

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