



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. 5807-23
294-19
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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 20 July 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 current application, as well as your previous application (NR20190000294), 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 Administrative Remarks (Page 11) 6105 counseling entry dated 19 January 2016 from your Official Military Personnel File. You contend the counseling entry is unjust because it was created prior to the conclusion of the civilian court proceedings surrounding the events on or about 1 January 2016. Further, you contend the counseling entry has affected your promotion potential, caused unnecessary delay in processing reenlistment requests, and continues to "cast an unfavorable light on [your] morals and character."

The Board noted your previous submission, NR20190000294, requested removal of the contested Page 11 counseling entry. The previous Board denied your requested relief. Specifically, the previous Board determined your entry into a pre-trial diversion program and the court order to pay a pre-trial diversion fee, which resulted in the charges being dismissed, were "tantamount to findings of guilt under the Uniform Code of Military Justice (UCMJ)" and

did not invalidate the counseling entry which appropriately documented the incident that occurred.

Upon review and consideration of all the evidence of record, to include the previous submission and the new evidence in the current submission, this Board concurred with the previous Board's determination that the Page 11 6105 counseling should remain in your record. This Board, noting charges one and two were dismissed for "evidentiary problems," determined the counseling entry remained factually accurate in that it counsels you for an "alcohol related incident which resulted in you being cited and arrested." Further, the Board noted it is within a Commanding Officer's (CO's) discretionary authority to determine when a 6105 counseling entry is warranted and also to determine the timing of such entry in order to maintain good order and discipline. Additionally, the Board noted service record entries are required by MCO P10170.12K (IRAM) when a Marine is counseled for any alcohol-related misconduct. The Board noted the dismissed charges but determined the civilian court's dismissal did not preclude the CO from counseling you on the underlying misconduct. After a full review, the Board again determined the contested counseling entry of 19 January 2016 creates a permanent record of matters the issuing CO deemed an essential part of your military history. The Board also determined the entry met the requirements detailed in MCO P1070.12K W/CH 1 (IRAM). Specifically, the Board noted the entry provided the opportunity to rebut the entry and was appropriately issued by the CO as evidenced by his signature on the entry. Based on the available evidence, the Board concluded you have provided insufficient evidence to overcome the presumption of regularity attached to the contested counseling entry or to establish that the CO's decision was unjust or materially in error. Therefore, the Board concluded the contested Page 11 counseling entry is valid as written and should remain in your record. 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,

8/3/2023

