



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

█
Docket No. 7167-23
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.

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 application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 19 September 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.

The Board carefully considered your request to remove your non judicial punishment (NJP), dated 28 October 2010, from your official military personnel file (OMPF), reimbursement of \$1812.00 from the forfeitures of pay incurred from the NJP, and remove the alcohol related incident from the Department of Navy's █

█ The Board considered your contention that the state of California dismissed your case. You believe your career has suffered from this blemish to your record and you have received much grief and negative stereotyping from an incident that occurred over 13 years ago. You provided as evidence, court documents from the █ Superior Court dismissing your case for consideration. The Board also noted that you indicated post-traumatic stress disorder (PTSD) on your application, but omitted evidence of PTSD or an explanation on how it influenced your misconduct.

The Board determined that upon review of your records, your NJP was valid at the time of imposition and punishment received was in accordance with appropriate Manual for Court-Martial guidance. In making its findings, 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. In making their decision, the Board acknowledged the evidence you provided, in particular the state of [REDACTED] court dismissal order and, despite your arguments, determined that the commanding officer acted properly and within his discretionary authority when determining that your misconduct warranted appropriate disciplinary action. Specifically, your drunken operation of a vehicle, of which you were convicted in the Superior Court [REDACTED]. Additionally, although the criminal charges against you were dismissed, the Board determined that dismissal does not exonerate you nor invalidate the underlying basis for misconduct, and the NJP is factual as to the events that occurred on that particular day. The Board, therefore, found you failed to overcome the presumption of regularity in your case. The Board thus concluded that the NJP is a matter of record and it does not constitute probable material error, substantive inaccuracy or injustice warranting removal from your OMPF. Further, concerning the information entered into the Navy's [REDACTED], the Board determined that this action was within the command's authority to do so in accordance with its policy and regulations. 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,

9/26/2023

