



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. 7455-23
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 applications 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 Administrative Remarks (Page 11) 6015 counseling entry dated 10 May 2022 and associated rebuttal. The Board considered your contention that the State of █ dismissed the charges against you and the arrest on which the charges were made were deemed to never have occurred. Additionally, you contend that the court documents forbids any agency from using the record in any way that could be harmful to employment. You assert that, although you were against the issuance of the Page 11 entry, you signed it so that you did not waive your right to provide a rebuttal statement.

The Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a 6105 entry counseling you for violation of Article 113 of the Uniform Code of Military Justice. Specifically, for drunken or reckless operation of a vehicle. The Board also noted that you acknowledged the entry and elected to submit a statement. The Board determined that the contested entry was written and issued according to the 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 (CO) signed the entry, and

he/she determined that your misconduct was a matter essential to record, as it was his/her right to do. The Board determined that your CO acted properly and within his discretionary authority when determining that your misconduct warranted the page 11 entry. 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, in making their decision, acknowledged the evidence you provided, to include your rebuttal statement and, despite your objections, determined that the counseling entry is valid. The Board took into consideration the decision of the Superior Court of [REDACTED] to dismiss your case, but noted they did so after you successfully completed the terms of Military Diversion, an alternative treatment program in lieu of trial which has the requirement to plead guilty to the charge(s). 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 Page 11 is factual as to the events that occurred on that particular day. Finally, the Board noted that the State of [REDACTED] order not to utilize your arrest record is not applicable to the Department of the Navy based on the supremacy clause of the U.S. Constitution. The Board therefore found your evidence insufficient to overcome this presumption. As a result, the Board concluded that there is no probable material error, substantive inaccuracy or injustice warranting removal of the page 11 entry from 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,

10/5/2023

