



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

█  
Docket No. 8214-23  
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.

A three-member panel of the Board, sitting in executive session, considered your application on 16 January 2024. 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 30 November 2023 advisory opinion (AO) furnished by the Marine Corps █ and your response to the AO.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully considered your request to remove your nonjudicial punishment (NJP), Report of NJP, Punitive Letter of Reprimand (PLOR), 4 June 2021 counseling entry, and all associate adverse material. The Board considered your contention that certain offenses to which you pleaded guilty at NJP were outside the two-year statute of limitations (SOL). You also contend that the counseling entry and Board of Inquiry (BOI) stemmed from the improper imposition of NJP. You assert that you were unable to get advice on options and the impacts of any decision regarding a response to the counseling or to accept or refuse NJP, and you were unable to thoroughly review the investigation. You claim that you were not informed of the SOL regarding misconduct and NJP, you were engulfed in the operational tempo of your billet, and it was difficult for you to truly appreciate and understand the nature of the NJP, what you were being offered, and your rights

regarding the voluntarily waiver of the two-year SOL. You argue that the NJP never should have been imposed without your waiver and the violation of the SOL renders the entirety of the NJP null and void and has poisoned everything that followed. You also claim that Naval Criminal Investigative Service (NCIS) did not properly summarize your interview, and you were denied the opportunity to confirm the accuracy of the information. You cited Docket No. 6159-21, during which the Board removed material related to an NJP that was imposed outside of the two-year SOL because the Commander agreed to remove the NJP based the Applicant's appeal.

The Board, however, substantially concurred with the AO that you failed to demonstrate that the SOL was not waived when you voluntarily accepted NJP for offenses that occurred more than two years earlier. The Board noted the correspondence in which the Commanding General, ██████████ ██████████ (CG, ██████████) notified you of his intent to impose NJP. The allegations included four violations of Article 92 (Failure to Obey a Lawful General Order or Regulation), one violation of Article 107 (False Official Statement), and two violations of Article 133 (Conduct Unbecoming an Officer and a Gentlemen) of the Uniform Code of Military Justice (UCMJ). Specifically:

(1) Charge I: Article 92, UCMJ:

- On 14 March 2019, you violated SECNAVINST M5510.30 by failing to report personal foreign travel on an SF86 form during the periodic reinvestigation.
- On or about 6 to 10 July 2020, you negligently failed to properly account for and properly turn in a L594 ground burst simulator in accordance with ██████████ ██████████ Order 3550.1A.
- From 29 to 31 December 2019, you violated Marine Corps Order 1050.3J by traveling outside the United States to ██████████ while in a leave status without proper authorization.
- On 14 March 2019, you failed to report all personal foreign travel when completing the SF86 form.

(2) Charge II: Article 107, UCMJ:

- On 16 October 2020, with the intent to deceive, you told two Naval Criminal Investigative Service (NCIS) agents that you disposed of a ground burst simulator. A statement that you knew was false.

(3) Charge III: Article 133, UCMJ:

- On 16 October 2020, you made a false official statement to NCIS Special Agents.
- During July 2020, you wrongfully brought the L594 ground burst simulator into your home and failed to properly report and dispose of it.

The Board also noted the first endorsement of the NJP notification in which you acknowledged that you did not desire to demand trial by court-martial and your willingness to accept punishment under Article 15, UCMJ. You also indicated that, prior to making your decision, you had the opportunity to consult with a lawyer. The Board noted, too, that during NJP, you pleaded guilty to all of the charges and specifications listed in the Notification of Intent and the Report of NJP indicated that you did not appeal the NJP or PLOR.

You contend that certain offenses to which you pleaded guilty at NJP were outside the two-year SOL, the Board, however, concurred with the AO that your waiver of the two-year SOL was implied by your acceptance of NJP and failure to appeal. The Board considered the fact that you consulted with counsel before accepting NJP and determined that presumption of regularity applies to the legal advice you received prior to accepting NJP. The Board also determined that your focus on the operational tempo of your billet and inability to appreciate and understand the nature of the NJP does not constitute an error or injustice. In addition, the Board noted that five of the seven violations were well within the SOL and determined the balance of your misconduct and guilty pleas were more than sufficient to support a basis for NJP, which, more likely than not, would have resulted in the same findings of guilt and the awarded PLOR.

Concerning your contention that the counseling entry and BOI stemmed from the improper imposition of NJP, the Board determined that your contention lacks merit. Your counseling entry and BOI ultimately stemmed from substantiated misconduct and not solely from the NJP. If not for the NJP, the counseling entry would have been issued for dereliction of duty for violating the policy on personal/portable electronic devices and for unauthorized international travel. The Board noted that the counseling entry was issued prior to your NJP and included misconduct not listed in the Notification of Intent to Impose NJP. Moreover, the counseling entry was issued as a separate administrative action that the CG had plenary authority to issue.

Concerning your BOI, the Board determined that the BOI did not stem from your NJP. The Board determined that NJP is not required for the convening of a BOI. Your substantiated misconduct as documented in the Notice to Impose NJP and Notification of BOI provided a sufficient basis to convene the BOI. In addition, the two-year SOL did not apply to the convening of the BOI. The Board also noted that based on sufficient evidence and your acceptance of responsibility, the BOI unanimously found that the preponderance of evidence proved the allegations indicated in the Notification of BOI. Consequently, the BOI recommended that you be separated with a General (Under Honorable Conditions) characterization of service, and your separation was approved by the Assistant Secretary of the Navy for Manpower and Reserve Affairs.

Concerning your contention that NCIS improperly summarized your interview and you were denied the opportunity to confirm the accuracy of the information, the Board determined that your contention lacks merit. In this regard, the Board noted that the Judge Advocate General Manual authorizes investigators to submit a summary of interviews. The Board found no evidence that the summary was inaccurate and you provided none. The Board also determined that the summary of your NCIS interview was not the only evidence available for consideration by your chain of command when determining that NJP and the BOI were warranted. The Board further determined that the totality of evidence which included your voluntary pleas of guilt and acceptance of responsibility were sufficient to support a basis for the administrative and adverse actions. As the

accused, you had a right to review the investigation; however, you were not entitled to a copy of the investigation. A redacted version of the investigation could have been obtained by submitting a request pursuant to the Freedom of Information Act.

Regarding your reliance on Docket No. 6159-21, the Board determined that you were not similarly situated as the service member in that case. The service member was charged only with a single specification that was outside of the SOL, the service member appealed the NJP findings, and his appeal was granted. In your case, the two Article 92, UCMJ violations did not form the sole basis for your NJP. In addition, the service member for Docket No. 6159-21, would have denied NJP, but could not because he was embarked aboard a ship. He also consistently denied the allegations, and pleaded not guilty. In your case, you could have denied NJP, but did not, you consistently pleaded guilty and accepted responsibility for all of the charges and specifications, and you did not appeal the NJP findings or awarded punishment.

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 and thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action. 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,

2/26/2024

