



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

Docket No. 8834-23  
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.

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 31 October 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.

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 the 29 November 2017 non-judicial punishment (NJP). The Board considered your contention that you received NJP for violating Uniform Code of Military Justice (UCMJ) Article 111 for driving onto a Naval Base, on 10 November 2017, with a blood alcohol concentration (BAC) of .06 percent. You claim you were stopped by the Master at-Arms (MA) because the MA smelled alcohol in your car. The MA called an off-base police officer to submit a sobriety test and BAC. The Police Officer said you were under the legal limit to drive so he left, but the MA on duty notified your command, because there was a zero tolerance on base for driving under the influence (DUI). You contend that there is no Base instruction for BAC levels and, since you had a .06 percent BAC level and were not charged with DUI, you feel like the NJP was unjust.

The Board noted you received NJP for violating Article 111, UCMJ. The Board also noted that the Commanding Officer (CO) found you guilty and awarded reduction in paygrade to E-2 and extra duty. You also received a significant problems evaluation report ending 29 November 2017. Block 43 noted that you were found guilty at NJP for violating Article 111, UCMJ.

The Board determined that your NJP is valid. In this regard, the Board noted that pursuant to the *Manual for Courts-Martial* (MCM) (2016 ed.), Article 111, UCMJ applies to any person subject to the UCMJ who operates or physically controls any vehicle, aircraft, or vessel while impaired by a substance. The Board found no evidence other than your statement that your BAC was below the legal limit and you provided none. Regardless, according to the MCM, a DUI charge or BAC above the applicable state legal limit is not required to be found guilty of violating Article 111, UCMJ at NJP. Moreover, as the fact finder at NJP, your CO weighed the merits of your case and relied upon a preponderance of the evidence when finding you guilty at NJP. Therefore, the Board determined that your evidence was insufficient to warrant removal of the NJP. The Board also determined that your CO acted within his discretionary authority, and conducted your NJP pursuant to the MCM (2016 ed.). As a result, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the NJP. 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,

11/21/2023

