



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. 8957-23
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 case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 5 December 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, as well as the 15 September 2023 decision by the Marine Corps Performance Evaluation Review Board (PERB), and the 11 August 2023 Advisory Opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30). Although you were afforded an opportunity to submit a rebuttal, you did not do so.

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 1 January 2017 to 18 September 2017 Fitness Report. The Board considered your contention that the fitness report was marked adverse due to an erroneously administered non-judicial punishment (NJP), which renders the report erroneous. You contend the convening authority erroneously administered punishment for "driving under the influence" when you were not arrested for DUI.

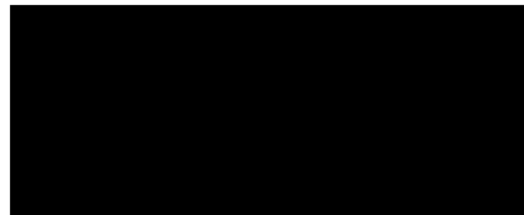
A previous Board considered your request to remove the NJP on 22 August 2023. The Board noted that you were arrested and taken to the police station where you were administered a breath sample above the legal limit (0.12% BAC). The Board also noted that your legal counsel explains in his 20 October 2017 letter that there was circumstantial evidence that you drove there. The previous Board also considered the letter you provided from the Convening Authority, however based upon the totality of the evidence, they were not compelled by his endorsement to favorably remove the NJP and denied your request.

Regarding your request remove the contested fitness report, the Board substantially concurred with the AO, and the PERB Decision that the fitness report is valid as written and filed, in accordance with the applicable PES Manual guidance. In this regard, the Board noted the adversity contained in the fitness report based upon the 18 September 2017 NJP that remains valid and still resides in your official record. Moreover, you omit any evidence to validate that the [REDACTED] State court dropped the charges and expunged the record of your arrest. Thus, the Board 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,

12/22/2023

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