



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. 8958-23
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 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, as well as the 15 September 2023 decision furnished 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). The AO was provided to you on 15 September 2023, and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

The Board carefully considered your request to remove the fitness report for the reporting period 1 January 2022 to 24 March 2022. The Board considered your contention that your civil case for operating a vehicle while intoxicated (OWI) was expunged in civil court on 3 April 2023. As evidence, you provided a court document noting that your period of probation has expired and your criminal record shall be expunged.

The Board, however, substantially concurred with the AO and PERB's decision that your fitness report is valid as written and filed, in accordance with the applicable Marine Corps Performance Evaluation System (PES) Manual. In this regard, the Board noted that you pleaded guilty to OWI, were subsequently convicted for OWI, and placed on probation. The Board determined that the expungement of your criminal conviction for OWI due to the completion of your

probation does not invalidate your fitness report. According to the *Manual for Courts-Martial* (2019 ed.), “It is immaterial whether...charges are dismissed or expunged from civilian courts’ records after payment of fine, completion of a term in jail or penitentiary, or completion of a period of probation. These actions do not change the character of the initial misconduct.” Thus the Board determined your fitness report was properly rendered adverse based on your guilty plea and conviction. As a result, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the fitness report 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,

11/21/2023

