



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. 9316-23
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 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 17 October 2023 decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), and the 16 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 17 October 2023, and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

The Board carefully considered your request to modify the fitness report for the reporting period 1 June 2022 to 29 June 2022 by removing or altering any wording associated with driving under the influence (DUI)/driving while intoxicated (DWI). According to your statement, on 2 December 2021, you were charged with driving while intoxicated (DWI). On 10 November 2022 a █ Circuit Court judge ruled that you were not guilty for DWI, and convicted you of misdemeanor reckless driving (code 46.2-852/Reckless driving - Endanger life or limb) with no other charges. You also stated that your non-judicial punishment (NJP) was held on 29 June 2022, prior to the conviction for reckless driving, and resulted in a punitive letter of reprimand. You contend that the fitness report is "adverse due to NJP and includes verbiage in the evaluation comments of "DUI", to which" you were not convicted.

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 received NJP for violating Article 113, Uniform Code of Military Justice, for the drunken operation of a vehicle with a breath alcohol concentration exceeding 0.08 percent. The Board also noted that you pled guilty, the Commanding General (CG) found you guilty at NJP, and you did not appeal the CG's decision or awarded punishment. The Board determined that your reporting officials properly marked your fitness report adverse for disciplinary action, and properly documented your NJP and the underlying basis for adversity according to PES Manual guidance. Specifically, the PES Manual considers NJP, and civil criminal convictions for reckless driving, where the ingestion of alcohol was a factor as disciplinary action. The Board also determined that the civil courts conviction for reckless driving instead of DWI does not change the character of your initial misconduct. Moreover, your plea of guilt and the CG's finding at NJP are preeminent to the civilian proceedings. The Board 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,

12/7/2023

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Deputy Director

Signed by: █