



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

██████████
Docket No. 895-24
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 applications on 26 March 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 applications, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations and policies, as well as the Advisory Opinions (AO) provided on 23 February 2024 by Navy Personnel Command ██████████ and the AO provided on 27 February 2024 by the Office of Legal Counsel ██████████ as well as your response to the AOs.

The Board carefully considered your request to modify your Evaluation & Counseling Record (Eval) for the reporting period 16 June 2022 to 31 January 2023. The Board considered your contention that the eval incorrectly states that you were “convicted” of an alcohol related incident (ARI), but that the State of ██████████ did not convict you.

The Board, however, substantially concurred with the ██████████ AO that the Eval is valid as written and filed, in accordance with the applicable Navy Performance Evaluation System (PES) guidance. In this regard, the Board noted that the Reporting Senior (RS) accurately prepared and submitted the fitness report in accordance with BUPERSINT 1610.10E (EVALMAN). Specifically, the Board noted that pursuant to para 13-6 of the EVALMAN, comments may be included on misconduct whenever the facts are clearly established to the RS satisfaction. In your case, the eval is adverse, and the RS provided justification for the adverse report by documenting that you were convicted of an ARI. Moreover, the Board noted that you pleaded guilty to the offense and were subsequently ordered to attend the ██████████

Next, the Board also substantially concurred with the [REDACTED] AO. In this regard, the Board noted that your Commanding Officer (CO) submitted a Final Civil Action Report (FCAR) in accordance with MILPERSMAN 1616-040, which details the offense, charges, sentence, and conditions. On 7 February 2023, you submitted a First Endorsement to the FCAR, in which you took responsibility for your actions and acknowledged your plea of "guilty." The AO determined that while you completed the court ordered conditions, which led to a later non-adjudication of the offense, it does not invalidate the necessity to submit the initial FCAR, nor does it require a later revocation of the FCAR. Moreover, the Board noted the fact that the [REDACTED] court allowed you to participate in the GCD Victims Panel for non-adjudication of the original ARI, does not negate the evidence that you were arrested for Driving Under the Influence or the CO's decision to mark your Eval adverse and submit the FCAR in accordance with relevant policies. Furthermore, the Board noted that you pleaded guilty to the initial charges. Thus, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal or modification of the Eval in question. 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,

4/14/2024

