



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

██████████
Docket No. 991-24
Ref: Signature Date

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Dear Petitioner:

This letter is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 19 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 application, together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies.

The Board determined that your personal appearance, with or without counsel, would 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 3 September 2021 Unit Punishment Book (UPB) which documents your Non-judicial Punishment (NJP). The Board considered your contentions that you received NJP for Driving Under the Influence (DUI), you did not commit the offense, you were falsely accused and charged for DUI before your case was disputed in civilian court and was later dismissed, and the NJP has negatively affected your promotion.

The Board noted, on 3 September 2021, you received non-judicial punishment (NJP) for violation of Articles 92 and 113, of the Uniform Code of Military Justice (UCMJ) by wrongfully operating a vehicle under the influence of alcohol at a speed of 114 mph in a 55 mph posted speed limit zone. You were advised of your rights under Article 31 and acknowledged your right to demand trial by court martial in lieu of NJP.

On 20 October 2023, the [REDACTED] dismissed the original charges of DUI Alcohol/.08 Percent or More and Driving over the Speed Limit during Commission of DUI. The court reduced the charge to Reckless Driving, Speed Limit over 100 mph based upon a plea agreement, which included completion of a twelve-month probation period and completion of the AB541 Alcohol Education Program. However, the Board noted the military and state justice systems are separate jurisdictions. Each retains the independent prerogative to process misconduct as they deem appropriate and, because each system has independent jurisdiction, they may reach differing conclusions. Thus, the Board determined the Commanding Officer was within his authority to find you guilty of Article 92 and 113, UCMJ despite a contrary decision by the [REDACTED] court. Moreover, the Board noted the fact that the [REDACTED] court allowed you to participate in an alcohol education program for reduction of the original findings does not negate evidence that you were driving under the influence of alcohol or the CO's finding at NJP. Further, the Board noted you waived any issues regarding the specificity of the charges when you agreed to accept NJP, and later declined to submit an appeal. The Board determined the Marine Corps properly followed all of its procedures for awarding an NJP. The Board thus determined your NJP was conducted in accordance with the Manual for Courts-Martial (2019 ed.).

Moreover, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. The Board found your evidence insufficient to overcome this presumption. Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the UPB entry. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. 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,

4/1/2024

[REDACTED]