



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

██████████
Docket No. 2647-24
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 9 April 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 for reconsideration to remove your 21 November 2019 Unit Punishment Book (UPB) which documents your Non-judicial Punishment (NJP). The Board considered your contention that the punishment you received is unjust. Specifically, you assert that you did not receive the previous Board's (3242-22) Decision Letter until 26 February 2024 and claim that you were later found not guilty of violating Article 87a of the Uniform Code of Military Justice (UCMJ) since it was later dismissed by the civilian court.

A previous panel of this Board determined that the requested relief was not warranted. In this regard, the Board noted that a civilian court dismissal and the actions of the Marine Corps are separate and distinct, and neither is dependent upon the other for legitimacy. Moreover, the Commanding Officer (CO) determined that you violated Articles 87a (Resistance, flight, breach of arrest, and escape) and 92 (Failure to Obey an Order or regulation) of the UCMJ. The previous panel of this Board thus denied your application, concluding that the evidence provided

does not overcome the presumption of regularity to prove the actions taken in your case, to impose NJP, issue a Page 11, and issue an adverse fitness report were improper. The Board further concluded the punishment awarded was authorized and not unjust.

After careful consideration of your application for reconsideration and review of the entire record, the present panel of the Board reached the same conclusion. First, the Board noted you provided no new evidence in support your claim that you were found "not guilty." Next, the Board considered your contention that the associated charges with violating article 87a were later dismissed by the civilian court. However, the Board noted that when the NJP occurred, you did violate Articles 87a and 92, of the UCMJ. Moreover, the Board determined the CO used his discretionary authority when he found you guilty at NJP regardless of the civilian court's decision to later reduce the initial charges based upon a plea agreement. Finally, the Board noted that a plea agreement does not mean the misconduct did not occur, but simply that a deal was later made for a reduced sentence or a different disposition of the misconduct. Thus, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the UPB entry, back pay, or a change with your selection to E-7. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

The Board did not consider your request to remove the fitness report for the reporting period 1 July 2019 to 21 November 2019, because you have not yet exhausted your administrative remedies. The Performance Evaluation Review Board (PERB) is the initial action agency for fitness report appeals; therefore, you must submit your request to the PERB according to the Marine Corps Performance Evaluation System Manual.

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,

4/16/2024

