



**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. 3495-24  
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 application on 25 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 carefully considered your request to remove an Administrative Remarks (Page 11) 6105 counseling entry, dated 16 February 2021, because the “case has been closed and expunged” by the Attorney General of the █. In support of your request, you submitted an expungement certificate, dated 12 September 2023, which states the record of your 20 June 2020 arrest for “DUI (Impair/Blood) – 1<sup>st</sup> offense” and “Operation/Registration of Motor Vehicle: No-Fault Insurance” has been expunged. Additionally, you submitted letters of recommendation<sup>1</sup> for the Board’s consideration.

Upon review and consideration of all the evidence of record, the Board determined the Page 11 6105 counseling should remain in your record. Although you contend the case has been “closed and expunged” and have provided an expungement certificate to reflect the action taken more than three years after your arrest, the Board noted the supporting documentation does not explain why the arrest was expunged. The Board concluded the supporting documentation also does not provide evidence that the content of the Page 11 entry is inaccurate. Additionally, the Board

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<sup>1</sup> The Board noted you listed four character references in block 19 of the DD Form 149 but only three letters of recommendation (from a First Sergeant, Captain, and Gunnery Sergeant) were included in the submission.

noted it is within a Commanding Officer's (CO's) discretionary authority to determine when a 6105 counseling entry is warranted and also to determine the timing of such entry in order to maintain good order and discipline. The Board determined the civilian court's expungement of the arrest from your record, more than three years later, does not preclude an entry that recorded the CO's counseling of you on the underlying misconduct. After a full review, the Board determined the contested counseling entry of 16 February 2021 creates a permanent record of matters the issuing CO deemed an essential part of your military history. The Board also determined the entry met the requirements detailed in MCO P1070.12K W/CH 1 (IRAM). Specifically, the Board noted the entry provided the opportunity to rebut the entry and was appropriately issued by the CO as evidenced by his signature on the entry. The Board thus concluded there is insufficient evidence of material error or injustice warranting corrective action. Based on the available evidence, the Board concluded you have provided insufficient evidence to overcome the presumption of regularity attached to the contested counseling entry or to establish that the CO's decision was unjust or materially in error. The Board concluded the contested Page 11 counseling entry is valid as written and should remain in 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,

5/14/2024

