



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

██████████  
Docket No. 4113-24  
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 23 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 applications, 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 your 24 May 2022 Administrative Remarks 6105 (page 11) counseling entry. The Board considered your contention that you were arrested by a ██████████ Patrol ██████████ Officer and charged with Driving Under the Influence (DUI), but you were found not guilty at the final court hearing and the charges were dismissed. The Board did not consider your request to remove your fitness report for the reporting period 8 March 2022 to 21 July 2022 because you must first exhaust 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.

The Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a 6105 entry counseling you for Violation of Article 113, Drunken or Reckless Operation of a vehicle, aircraft, or vessel. Specifically, on 6 March 2022, you were arrested by a ██████████ Officer for completing a breathalyzer that resulted in a blood alcohol content level above the legal limit. The Board noted you signed the counseling entry and although you were afforded the opportunity to submit a statement, you chose "Not To." The Board determined the contested counseling entry was written and issued according to

the MARCORSEPMAN. Specifically, the counseling entry provided written notification concerning your deficiencies, specific recommendations for corrective action, where to seek assistance; the consequences for failure to take corrective action, and it afforded you the opportunity to submit a rebuttal. Moreover, your commanding officer (CO) signed the counseling entry, and he/she determined that your substandard performance/misconduct was a matter essential to record, as it was his/her right to do.

Regarding your contention that you were found not guilty at the final court hearing on 17 November 2023 and the charges were dismissed, the Board noted although you completed the court ordered conditions (i.e. Non-Drug Diversion Program), and the court later agreed to dismiss the DUI charges, it does not negate the evidence that you were arrested for DUI or invalidate the CO's decision to issue the counseling entry. 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. The Board 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,

5/23/2024

