



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. 5304-24
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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 9 July 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, as well as the 3 June 2024 Advisory Opinion (AO) provided by Navy Personnel Command (PERS-00J), and as your response to the AO.

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 all adverse material from your official military personnel file as follows: (1) Nonjudicial punishment (NJP) of 20 April 2007 and all associated documents; (2) Status in the Navy letter of 17 September 2007; (3) Commander, Navy Personnel Command (PERS-833) letter of 2 March 2009, notification of removal of your name from the Fiscal Year (FY) 2009 Lieutenant All Fully Officer Qualified List (AFQOL) and all associated documents; and (4) Commander, Navy Personnel Command (PERS-833) letter of 15 December 2011, notification of removal of your name from the FY 2010 Lieutenant AFQOL and all associated documents. You assert the contested documents were the result of NJP for

violating Article 111, Uniform Code of Military Justice (UCMJ) for driving under the influence and the Punitive Letter of Reprimand (PLOR). You assert you were advised by your civilian attorney not to inform your chain of command, which compounded your punishment, and that the NJP was excessive and in violation of JAG Instruction 5800.7D (JAGMAN). You also assert your delay in requesting relief was to build a career record, which shows there is no deficiency in your character as the PLOR accuses and that you have earned your place in the Navy with a record of sustained, superior performance. In response to the AO, you emphasize the delay in submitting your request was to permit your performance and accomplishments to be established as a matter of record over time and that the PLOR and commanding officer (CO) statements at NJP directly challenged your character as a person and as a Naval Officer. Next, you claim that the AO incorrectly states that the JAGMAN allows commands to execute punishment when a civilian conviction has not been adjudicated and you claim the spirit of the article is to avoid replicating punishment. Finally, you assert the severity of the NJP has adversely affected your career for 17 years and the Board should weigh your record and accomplishments against the adversity that occurred when you were a young officer and grant your request.

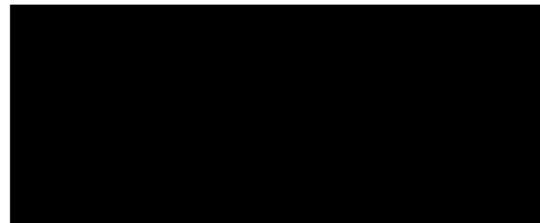
The Board noted while an Ensign, you received NJP on 20 April 2007 for violation of Article 111, UCMJ, operating a vehicle while intoxicated as defined by the legal limit set forth by the State of [REDACTED]. You were awarded a PLOR and 30 days restriction aboard the [REDACTED]. The Board noted you acknowledged your Article 31, UCMJ Rights, you pled guilty and accepted NJP, and you did not appeal the NJP. In response to the PLOR, you acknowledged your poor judgement and decision-making and accepted responsibility for your actions. As a result of NJP, your CO recommended that you be required to show cause for retention in the naval service. Additionally, your name was subsequently removed from the FY09 and FY10 Lieutenant AFQOL.

The Board however, determined that your NJP was procedurally correct and your CO, who relied on a preponderance of evidence, acted within his discretionary authority to impose NJP. The Board also determined that your performance since the NJP does not invalidate the misconduct. Accordingly, the Board concluded that there is no probable material error or injustice warranting removal of your NJP or related material.

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,

8/1/2024

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