



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

██████████  
Docket No. 6524-24  
Ref: Signature Date

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██  
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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 21 January 2025. 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 12 August 2024 advisory opinion (AO) furnished by the Marine Corps Military Personnel Law Branch (JPL), the 30 October 2024 AO furnished by the Licensed Clinical Psychologist (LCP), and your response to the AOs.

The Board carefully considered your request to remove your 25 April 2023 Unit Punishment Book / nonjudicial punishment (NJP) and related derogatory material. You also request retroactive eligibility for promotion to Gunnery Sergeant (GySgt/E-7) and any other appropriate relief. The Board considered your contention that you did not commit any criminal or legal violations and you were treated medically and successfully completed the assigned programs. You claim there is a discrepancy between the substance abuse order related to drunk on duty and the base order concerning alcohol consumption. You also contend the order you were placed under is unlawful considering the incident(s) were medically related and not related to any legal, criminal or behavioral problems. You further contend:

(1) The order to cease alcohol consumption, issued by ██████████, lacked the necessary criteria to be deemed lawful. According to *U.S. v. Sprague* and other case law, an order must have a valid military purpose to interfere with private rights or personal affairs. While the intent behind the no-drink order was to prevent future alcohol-related incidents, such paternalistic motives do not suffice

to establish a valid military purpose. The order was unrelated to your ability to perform your duties and sought to control your personal behavior off-duty thus unlawfully interfering with your private life. Marine Corps Order (MCO) [5300.17], Substance Abuse Program (SAP) order establishes a clear framework that places medical professionals and Consolidated Substance Abuse Counseling Centers (CSACCs) at the forefront of evaluating and managing substance abuse issues within the Marine Corps. The order requires that treatment decisions, including diagnoses and modifications to treatment plans, be made by a credentialed Medical Officer or clinical psychologist.

(2) The legitimacy of your NJP is undermined by the unlawful foundation of the no-drink order. The NJP resulted in you being dropped from Professional Military Education and passed for promotion; which are significant impacts to your career. Given that the NJP was predicated on a directive lacking lawful authority, the imposed punishment should be nullified.

(3) The administrative separation board (ASB) exonerated you, finding no basis for separation due to the illegitimacy of the no-drink order. The SAP order outlines policies for addressing alcohol abuse, including the issuance of no-drink orders. Such orders must be issued by medical providers with a clear nexus to military service. The no-drink order issued by an operational commander, rather than a medical authority, lacked this nexus and did not comply with the prescribed procedures, rendering it invalid.

In response to the AO, you contend the AO's conclusion is fundamentally flawed as it fails to adhere to established legal principles governing the validity of military orders and ignores the procedural requirements outlined in applicable Marine Corps policies. Furthermore, case law clarifies that orders interfering with personal rights must have a direct military nexus. The no-drink order issued by ██████████ failed to demonstrate a valid military purpose. The ASB board found "no basis" for separating you; concluding that the no drink order was not lawful as it did not come from a medical provider and lacked a nexus to military service.

The Board noted the correspondence from ██████████ documenting your failure of two alcohol detection device tests during duty hours. ██████████ also ordered you to "cease consumption of any and all alcohol containing substances that could incur incapacitation from duty." The Board also noted that you acknowledged the order in addition to your understanding of your duty as a staff sergeant of Marines. On 2 November 2022, you received an Administrative Remarks (Page 11) entry counseling you for failed alcohol detection test during a command urinalysis event and when checking into a CSACC appointment. On 7 April 2023, you received another Page 11 entry counseling for violating the order to cease the consumption of any substances containing alcohol evidenced by your blood alcohol concentration (BAC) of .018 percent when you checked into the CSACC at 1130.

The Board determined that your Commanding Officer's (CO's) finding that ██████████ order was lawful is not an error or injustice. According to SECNAVINST 5300.28D, "Alcohol and drug abuse by members of the Armed Forces is incompatible with the maintenance of high standards of performance, military discipline, readiness, and reliable mission accomplishment." According to the SAP order, "Alcohol abuse . . . is contrary to the effective performance of Marines and to the Marine Corps mission and will not be tolerated. Alcohol and drug offenses must and will be dealt with swiftly and effectively." Moreover, the objective of the SAP order is to improve the capability

of Commanders, substance abuse personnel, and Marines in preventing and treating alcohol and drug abuse problems that detract from unit performance and mission readiness. The Board also determined your contention that the order was unlawful, paternalistic, and interfered with your private or personal affairs is without merit. Prior to being issuing the order by ██████████, you failed two separate alcohol detection device test during duty hours. Specifically, on 19 September 2022 during a command urinalysis event, you had a BAC higher than .04 percent, and on 23 September 2022, you had a BAC of .029 percent when checking into a CSACC appointment. According to the *Manual for Courts-Martial* (MCM), ‘duty’ means military duty. Specifically, on duty relates to duties, in garrison, at a station, or in the field, and does not relate to those periods when, no duty is being required, when “off duty” or “on liberty.” The Board noted that each failed alcohol detection test occurred when you were “on duty,” in an official duty status, during routine duty hours. The Board also determined that ██████████ order was clear, specific, related directly to a valid military purpose, i.e. your ability to perform your duties, and it was in keeping with policy.

The Board further noted that the SAP order advises commanders that every effort must be made to identify and treat Marines before their record has deteriorated to the point where administrative separation is likely. In your case, your problem with alcohol was identified, ██████████ took measures to intervene, you were properly referred for alcohol abuse screening and treatment, and you knowingly violated the order. Contrary to your contentions regarding a commander’s authority, the SAP order identifies the commander as a critical part of the process to prevent of alcohol abuse and a Marines treatment. Moreover, the SAP order includes the unit commander in the Marine’s counseling program and in supporting behavioral change.

The Board substantially concurred with the AO that your NJP is valid in accordance with the MCM (2019 ed.). In this regard, the Board noted that you received NJP for violating Article 92, Uniform Code of Military Justice (UCMJ) by failing to obey a lawful order to cease consumption of all substances containing alcohol as evidenced by your breathalyzer tests result of .027 percent at 1057 and .029 percent at 1118 on 17 April 2023. The Board also noted that you were properly advised of your Article 31, UCMJ Rights, you accepted NJP, certified that you were afforded the opportunity to consult with a military lawyer, and you declined to appeal your CO’s finding of guilt.

NJP is not a court-martial. NJP is a disciplinary measure that provides commanders with an essential and prompt means of maintaining good order and discipline and promotes positive behavior changes in service members without the stigma of a court-martial conviction. The Board determined that your CO relied upon a preponderance of evidence that included two failed alcohol detection tests results and a history of counselings related to alcohol abuse when determining that NJP was warranted. Moreover, the Board also determined your CO acted within his/her discretionary authority, properly found the order by ██████████ lawful, and that you violated that order.

Concerning your ASB, the Board noted that your ASB unanimously found that the preponderance of evidence did not support a basis for separation. The Board, however, determined that the ASB finding does not nullify your NJP. In this regard, NJP and administrative separation proceedings are separate and distinct processes that serve different purposes and rely upon different regulations. An ASB is administrative in nature with the fundamental purpose of determining your suitability to serve on the basis of your conduct and your ability to meet and maintain the required standards of performance, while NJP is disciplinary in nature and provides commanders with a means to swiftly

maintain good order and discipline. The Board found no evidence that the ASB determined that [REDACTED]

Concerning your claims of other mental health and contentions that the incident(s) were medically

Concerning your request for retroactive promotion to GySgt and the removal of other adverse

You are entitled to have the Board reconsider its decision upon submission of new matters, which

Sincerely,

2/7/2025

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