



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. 6596-24
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 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.

The Board carefully considered your request to remove the Administrative Remarks (Page 11) counseling entry dated 9 December 2022 because the Page 11 entry states you were involved in an alcohol related incident but your chain of command only had that information because you self-incriminated yourself after never being informed of or read your rights. You further contend that if you had known [your right to remain silent] at the time, you would not have answered the questions asked during the interrogation by the command First Sergeant and Sergeant Major.

The Board, however, determined the counseling entry creates a permanent record of matters your Commanding Officer (CO) deemed significant enough to document. The Board noted the entry provided written notification concerning your deficiencies, specific recommendations for corrective action, and an explanation of the consequences of failure to successfully take the recommended corrective action. The Board also noted you availed yourself of the opportunity to provide a rebuttal statement and that statement is properly included with the counseling entry in your official military personnel file. Further, the Board noted the entry was appropriately issued by a CO as evidenced by his signature on the entry. The Board carefully considered your contentions but determined the CO has wide discretion regarding the subject matter of a counseling entry, and it is within his discretionary authority to determine if/when a counseling

entry is warranted. The Board considered your contention regarding the command's failure to inform you of your right to remain silent but noted the contended "lack of rights" does not impact the administrative process of counseling you for your misconduct because "unwarned" statements are not prohibited. Further, the Board noted the counseling describes you punching a [REDACTED] Police Car and being detained and transferred to the [REDACTED] Military Police, and concluded the information in the counseling entry was not derived solely from your questioning. As a result, the Board concluded there is insufficient evidence of material error or injustice warranting the removal of the contested Page 11 entry. 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,

8/7/2024

