



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. 7052-24
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 13 August 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, as well as the 15 April 2024 advisory opinion (AO) provided by the Office of Legal Counsel (PERS-00J) as part of your initial application to this Board, and 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.

You previously applied to this Board to have your 17 May 2023 Drug and Alcohol Report (DAR) from your official record. Your request was denied on 21 May 2024.

The Board carefully considered your request for reconsideration to remove the 17 May 2023 DAR from your official record. The Board considered contentions that the DAR clearly exhibits that a material error exists and mandatory requirements for a DAR were not completed correctly, thereby making the DAR invalid. The Board also considered your claim that false accusations are the only reason the event of the DAR took place. Next, you claim third party witness testimony from the Morale Welfare and Recreation (MWR) staff/bartender, who investigators failed to interview during the time of the alleged incident, shows the accusers were "lying." The

Board also considered your assertion that a breathalyzer was not conducted by military police at the time of the incident and it further demonstrates without a doubt that you were [not] intoxicated or that alcohol exacerbated the events. Finally, the Board considered your assertion that U.S. Naval Criminal Investigative Service (NCIS) approved your request to have your DNA sample destroyed and expunged, which was also approved by the convening authority who [later] changed the charge to “not guilty.”

After careful consideration of your application for reconsideration and review of the entire record and your new evidence, the Board substantially concurred with the previous Board’s decision that the DAR is valid. In this regard, the Board determined the DAR was properly issued in accordance with OPNAVINST 5350.4E, which indicates that the command must submit a DAR within 14 days of an Alcohol Incident and it does not require a DAR be removed if there is no administrative separation, criminal charging, or non-judicial punishment. Furthermore, the Board noted the CO, [REDACTED] concluded the consumption of alcohol was a contributing factor to you committing an offense punishable under the MILPERSMAN and the subsequent dismissal of any action against you does not negate the requirement to enter a DAR into the Alcohol and Drug Management Information Tracking System (ADMITS).

In regards to your contention that a DAR must be signed electronically via ADMITS by the CO, the Board determined only those members who have been designated by the CO as a designated representative (e.g. DAR approver) are granted access to ADMITS. Therefore, the Board was not persuaded by your contention that the DAR is invalid since it was not electronically signed by the CO.

Next, the Board noted your claims that the accusations against you were false, a breathalyzer was not conducted by military police, and third party witness testimony from the MWR staff/bartender show the accusers were “lying.” The Board determined the CO appropriately relied upon an NCIS investigation in concluding sufficient evidence exists to warrant a DAR in your case. Further, the Board concluded your CO was best situated to determine the veracity of your misconduct. The Board is not an investigative agency and 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 to be insufficient to overcome the presumption of regularity in your case. Thus, the Board concluded that the DAR is valid and does not constitute a probable material error or injustice warranting removal from 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,

9/11/2024

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Executive Director

Signed by: 