



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. 7154-24
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 17 September 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 5 January 2024 advisory opinion (AO) furnished the Navy Office of Legal Counsel (BUPERS-00J) and your response to the AO.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will 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 your 11 May 2023 Report and Disposition of Offense(s)/non-judicial punishment (NJP), Punitive Letter of Reprimand (PLOR), all record of the NJP, and your fitness report for the reporting period 1 May 2023 to 11 May 2023. The Board considered your contention that you were found guilty at NJP of violating the Joint Travel Regulations (JTR), a non-punitive regulation, which should preclude NJP and the PLOR. You also contend:

(1) The alleged violations of Article 92 are not legally cognizable offenses under the Uniform Code of Military Justice (UCMJ). The JTR is not a punitive general regulation; therefore, violating it as charged cannot be a violation of Article 92 and should be set aside.

(2) Article 92 is only violated when the accused person runs afoul of a lawful general regulation. The JTR is not issued by a person authorized to issue a lawful general regulation under Article 92. The JTR is issued by the Per Diem, Travel, and Transportation Allowance Committee, and not by any of the qualifying authorities. Even if the JTR was issued by competent authority, it is not a punitive regulation within the meaning of Article 92. The JTR does not contain the traditional language establishing punishment under the UCMJ for a violation of its provisions.

(3) You were not afforded due process. The specifications for which you were punished failed to state an offense. The outcome of the NJP was predetermined, you were denied a meaningful opportunity to exercise your right to appear at the hearing, present evidence, and have your case heard by the NJP authority. At the conclusion of Mast, the Staff Judge Advocate (SJA) produced completed documents that included the PLOR. It was impossible to request trial by court martial if you wanted to remain in command. Had you requested court martial, you would have been relieved.

(4) No one else in the command had a press release issued announcing removal from command over \$356. The Commanding Officer (CO) made the decision to execute the event over your objections, failed to notify the Commodore of the predicament, and ordered personnel to proceed with putting local personnel on orders. Additionally, the Subject Matter Expert advised you that putting personnel on orders was at the Commander's discretion.

In response to the AO, you noted that the AO did not respond to your contentions, and you restated the aforementioned contentions.

The Board noted the Report of Investigation (ROI), which found that between April and June 2022, while serving as the Executive Officer, ██████████ you violated Article 92, UCMJ. A preliminary inquiry revealed that ██████████ personnel were authorized orders for the Operational Training Meeting (OTM) one mile from your Permanent Duty Station (PDS). Of the 151 personnel who submitted vouchers, 70 personnel with liquidated orders were within 60 miles of the training site and PDS. The ROI also noted that you submitted a travel authorization and travel voucher paid in the amount of \$356.00 (lodging \$245.00/ Meals-Incidental \$111.00). The Investigating Officer (IO) determined that you violated Article 92, UCMJ in the development, approval and execution of the June 2022 OTM. This included unauthorized travel for yourself and others, as well as unauthorized commitments and purchases. The IO found that you authorized and approved a Defense Travel System (DTS) voucher for one unauthorized traveler—the CO. The IO noted, too, that the JTR specifies that appropriate disciplinary action be taken when travelers willfully fail to follow the JTR. The IO determined that you violated regulations, which you had a duty to obey and you failed to do so.

The Board noted on 11 May 2023, the Commander, ██████████ imposed NJP for violating Article 92 (failure to obey an order or regulation). Specifically, you failed to obey the JTR by requesting and executing unauthorized travel and reimbursement. You also authorized travel and expenditures that did not meet the requirements for authorized travel under the JTR. The Commander, ██████████ found you guilty and awarded a PLOR and forfeiture of \$356.

The Board also noted that you acknowledged your Article 31, UCMJ Rights, were afforded the opportunity to consult with military counsel, and accepted NJP. The Board noted, too, that you appealed the Commander's finding of guilty arguing mens rea, arguing that you did not willingly or recklessly violate the JTR, and that the punishment was disproportionate to the offenses. Commander, ██████████ noted that you submitted and were approved for travel occurring one mile from your PDS. You completed Certifying Officer training approximately one year prior and you did not comply with the JTR or "CNRCINST 7132.5A," nor did you facilitate procedures so your staff could comply. Commander, ██████████ also denied your second appeal based on a lack of new evidence and the timeliness of your request. Commander, ██████████ also determined that based upon the sufficiency of the evidence of record to support the CO's decision, the punishment imposed was lawful, not disproportionate to the offense, and was less than the maximum punishment that may be awarded at court martial. The Board determined that your NJP was conducted in accordance with the Manual for Courts-Martial (MCM) (2023 ed.) The Board also determined that the Commander, ██████████ acted within his lawful discretionary authority and relied upon a preponderance of evidence that included the ROI, witness testimony, and DTS authorizations and vouchers when finding you guilty at NJP.

The Board noted that you received a Detachment of Individual/Regular fitness report for the reporting period 1 May 2023 to 11 May 2023. The Board also noted that your performance traits for Military Bearing and Leadership were marked 2.0. As justification, the Reporting Senior commented that "NJP was imposed by ██████████ on 11 May 2023 for violation of UCMJ Article 92 (2 specifications) . . . Concluding date of the proceeding was 04 Mar 2024." The Board determined that your fitness report was submitted and filed in accordance with the applicable Navy Performance Evaluation System Manual (EVALMAN). The EVALMAN directs RSs to comment on poor performance or misconduct where necessary and fitness reports should take into account misconduct that has been established through reliable evidence to the RS's satisfaction.

The Board substantially concurred with the AO that your request does not merit relief. In this regard, the Board determined that the JTR is a lawful general order punishable under Article 92, UCMJ. The Board noted that the authority, applicability, and administration of the JTR is addressed in the regulation. Specifically, "[t]he JTR implements *policy and laws* establishing travel and transportation allowances of Uniformed Service members and Department of Defense (DoD) civilian travelers. The JTR has the *force and effect of law* for travelers, and implements *statutory regulations and law* . . ." [emphasis added] The JTR also states, "[o]rganizations are expected to take appropriate disciplinary action when travelers willfully fail to follow the JTR." The Board determined there is sufficient evidence that you willfully failed to follow the JTR and to support the basis for your NJP. Moreover, the Board determined that the specifications and offenses for were clearly stated in the Report and Disposition of Offense(s).

The Board determined your contention regarding the punitive nature of the JTR lacks merit. The MCM does not reference "punitive regulations." According to the MCM, an Article 92, violation occurs when "any person subject to Article 92 who "violates or fails to obey *any lawful general order or regulation*." The Board determined that the JTR is a lawful general regulation. Although the JTR is issued by the Per Diem, Travel, and Transportation Allowance Committee, the committee members include the Deputy Assistant Secretary of the Navy (Military Manpower

