



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

██████████  
Docket No. 7521-24  
Ref: Signature Date

██  
██  
██

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.

A three-member panel of the Board, sitting in executive session, considered your application on 30 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 your 3 November 2022 Unit Punishment Book, which documents your Non-judicial punishment (NJP). The Board considered your contention that a motion to nolle prosequi was filed on 18 January 2023 and signed by the ██████████ County State Court Judge. The Board also considered your assertion that you were select grade for corporal before the incident; however, because you were attending an Individual Training Exercise and the incident occurred following your return from ITX (██████████) to ██████████, ██████████, you were never pinned, and you went from a corporal select to private first class.

The Board noted on 3 November 2022, the commanding officer (CO) imposed NJP for violating the Uniform Code of Military Justice Articles 87a (Flight from Apprehension), 92 (Failure to obey a lawful order or regulation), and 113 (Drunken or Reckless Operation of a Vehicle). Specifically, on 31 October 2022 you were charged with a misdemeanor for speeding and reckless driving by driving a motor vehicle in reckless disregard of the safety of persons or property by driving on both shoulders of the road at a high rate of speed while attempting to elude an officer. You were advised of your rights under Article 31 and acknowledged your right

to demand trial by court martial in lieu of NJP. As punishment, you were reduced in grade to private first class (E-2), placed on 45 days restriction, and you received 45 days extra punitive duties. You also received forfeiture of \$1027 for two months, which was suspended for six months. The Board noted that you accepted NJP, you did not submit written matters for consideration, and you did not appeal your CO's finding of guilt at NJP.

In regard to your contention that the state court actions exonerate you of your misconduct and reflect your innocence. The Board noted that military and state justice systems are separate and concurrent jurisdictions, and each retains the independent prerogative to charge and try members. The Board further noted a nolle prosequi simply acts as an indefinite adjournment to the case and does not amount to an acquittal or prove your innocence. Because each system has independent jurisdiction, they may reach differing conclusions. Therefore, the fact that the [REDACTED] court agreed to dispose your charges with a nolle prosequi, because you were soon deploying, does not negate the CO's finding at NJP. The Board determined that your NJP was conducted according to the *Manual for Courts-Martial* (2019 ed.) and your CO acted within his discretionary authority to impose NJP. The Board also determined that when making the decision to impose NJP, the CO relied on a preponderance of evidence that substantiated the allegations of misconduct.

Finally, in regard to your claim that you were a select grade for promotion to corporal prior to the imposition of NJP, the Board noted, pursuant to Marine Corps Order P1400.32D (MARCORPROMMAN, VOL 2, ENLPROM), the Commandant of the Marine Corps has delegated the authority to promote enlisted Marines to the grades of private first class through sergeant to unit Commanders. In your case, the Board determined your selection for promotion to corporal was no longer valid when your CO chose to reduce you in grade at NJP. Moreover, the Board also noted pursuant with para 1204 of the ENLPROM, a Marine is not eligible for promotion consideration and may not be promoted while in a promotion restriction status. Thus, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the NJP or associated documents. 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,

8/8/2024

