



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

█  
Docket No. 7919-24  
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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 20 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 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 3 July 2024 decision by the Marine Corps Performance Evaluation Review Board (PERB), and the 21 January 2024 Advisory Opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch (MMRP-30). Although you were afforded an opportunity to submit a rebuttal, you did not do so.

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.

The Board carefully considered your request to remove your fitness report for the reporting period 1 January 2020 to 31 December 2020. The Board considered your contentions that the reviewing officer (RO) comments do not reflect the RO's comparative assessment in Section K.3. You further claim that the 23 November 2020 Administrative Remarks (Page 11) 6105 counseling entry shows that an incident took place prior to the fitness report being written. Next, you contend although the fitness report was not marked adverse, there was a dramatic change in markings. Specifically, blocks E1, F3, G2, and G3 were significantly impacted from the previous fitness report suggesting the incident in question was considered. You further claim

that since the report was processed, the incident in question was dismissed and that you have been completely exonerated of all wrongdoing. Finally, you claim the comments from the previous fitness report ending 31 December 2019 show markings and comments that were much higher and the contested fitness report likely would have been the same without the incident in question during the reporting period.

The Board noted pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), on 23 November 2020 you were issued a 6105 entry for violation of Article 113 of the Uniform Code of Military Justice (UCMJ) for drunken or reckless operation of a vehicle, aircraft, or vessel. Specifically, on 2 October 2020, you were pulled over by the Texas Department of Public Safety and upon further investigation, you were arrested and charged with Driving While Intoxicated (DWI) and detained in county jail overnight; a Class B Misdemeanor. The counseling also indicates that you were uncooperative and refused to take a breathalyzer test. The Board noted that you signed the entry, and your rebuttal is filed in your official military personnel file.

The Board however, substantially concurred with the AO and the PERB decision that the contested fitness report is valid as written and filed, in accordance with the applicable Performance Evaluation System (PES) Manual guidance. In this regard, the Board noted, pursuant to the PES Manual, when a commander confirms, by a preponderance of evidence, that the willful ingestion of alcohol contributed to an incident in which the member violated the UCMJ, it should be reported as derogatory material on the Marines next reporting occasion comes due. In your case, the Board found that although the report was not marked adverse and the civilian court later dismissed the DWI, it does not negate reporting official's requirement to properly document your performance during the reporting period. Furthermore, the Board noted there is no PES Manual scale to "match" comments with markings, nor is any such scale feasible or viable. Moreover, pursuant to the PES Manual, "[a] report is not considered unjust solely because the relative value and/or comparative assessment marks are rated lower than other reports." The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action. 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

