



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

██████████  
Docket No. 9277-24  
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 8 April 2025. 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 also considered the 11 February 2025 advisory opinion (AO) furnished by the Licensed Clinical Psychologist. The AO was provided to you on 19 February 2025. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

The Board carefully considered your request to remove your 4 January 2023 Unit Punishment Book (UPB)/nonjudicial punishment (NJP), Administrative Remarks 6105 (Page 11) entry, rebuttal statement, and reinstate your forfeiture of pay from the NJP. You also request to remove the fitness report for the reporting period 20 August 2022 to 4 January 2023. The Board considered your contention that your case was deferred to the military diversion court system in the state of California under the premise that the issues stemmed from Post Traumatic Stress Disorder (PTSD); which you claim was corroborated by the audio and footage during the arrest.

Since you claim a mental health condition should mitigate your misconduct, the Board considered the AO. The AO states in pertinent part:

There is evidence of diagnoses of Depression (pre-misconduct), and PTSD (post-misconduct) in his service record. It is possible that his alcohol abuse (and subsequent) DUI was due to Depression. There is not enough evidence as contained within his available service record to provide a nexus between his

misconduct and PTSD. Furthermore, he was counseled twice (several years apart) for inappropriate social media posting. This behavior cannot be said to have been caused by a mental health condition. Additionally, he completed substance abuse programming and received a DUI after completion of programming. Additional records (e.g., active duty medical records, dates, location of deployments and MOS served, post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his separation) would aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion that there is sufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition."

The Board noted that you were arrested on 4 December 2022 for driving under the influence (DUI) and received NJP for violating Uniform Code of Military Justice (UCMJ), Article 113 for physically controlling a vehicle while impaired by alcohol with a blood alcohol concentration (BAC) of .15 percent. The Board also noted that you acknowledged your Article 31, UCMJ Rights, certified that you were afforded the opportunity to consult with a military lawyer prior to accepting NJP and elected not to appeal your commanding officer's (CO's) finding of guilt at NJP. The Board determined that your CO acted within his discretionary authority and relied upon a preponderance of evidence when finding you guilty at NJP. Moreover, the Board found no evidence of error or injustice and determined that your NJP was conducted pursuant to the applicable Manual for Courts-Martial (MCM). You were also issued Page 11 entries counseling you regarding your misconduct and as notification of your restriction from promotion to the next higher grade for 12 months. The Board determined that your counseling entries are valid and were written in accordance with the Marine Corps Separation and Retirement Manual and Marine Corps Individual Records Administration Manual.

The Board noted the Superior Court of California civil court document indicating your successful completion of the Military Diversion Program. The Board, however, determined that it is immaterial whether your charges were dismissed or expunged after completion of the Military Diversion Program. The actions by the civil court have no bearing on your CO's authority to impose NJP and do not change the underlying character of your misconduct. Additionally, a violation of Article 113, UCMJ does not require a civil DUI conviction.

Concerning your contention that the issues stemmed from PTSD, the Board substantially concurred with the AO that there is insufficient evidence to attribute your misconduct to a mental health condition. As the AO explained, there is not enough evidence within your available service record to provide a nexus between your misconduct and PTSD. Therefore, the Board determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

The Board thus concluded 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.

Concerning your request to remove your fitness report, the Board determined that you have not exhausted your administrative remedies. In accordance with the Marine Corps Performance Evaluation System Manual, the Performance Evaluation Review Board (PERB) is the initial agency for fitness report appeals; therefore, you must submit your request to the PERB prior to this Board taking any action on your request.

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,

4/23/2025

