



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

█
Docket No. 10358-24
Ref: Signature Date

█
█
█

Dear █,

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 26 November 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 11 September 2024 decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), 23 July 2024 advisory opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch. The AO was provided to you on 11 September 2024, and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

The Board carefully considered your request to remove the fitness report for the reporting period 13 June 2015 to 9 July 2015. The Board considered your contention that in violation of the Marine Corps Performance Evaluation System (PES) Manual, the fitness report was written while your driving while intoxicated (DWI) case was being adjudicated. You claim the adjudication was completed soon after and there was no finding of guilt or adverse paperwork.

The Board, however, substantially concurred with the PERB's decision that you did not meet the burden of proof nor shown by preponderance of evidence a substantive inaccuracy or injustice warranting removal of your fitness report. The Board determined that your fitness report is valid as written and filed in accordance with the applicable PES Manual. In this regard, the Board noted that you received an adverse Commandant of the Marine Corps (CMC) Directed fitness

report due to an alcohol related incident. In Section I, your Reporting Senior (RS) commented, “MRO [Marine Reported On] convicted of DWI on 20150709, reported per MCO 1610.7, chapter 3, para 9.b. MRO pled guilty to DWI.” The Reviewing Officer (RO) concurred with the adverse nature of fitness report. In your statement, you admitted to being fully responsible for your actions and understood that receiving a citation is not in keeping with the high stands to which you hold yourself. The Board also noted the █ General District Court document finding you guilty on 9 July 2015. The civil court awarded unsupervised probation for two years and restricted your operator’s license for one year. According to the PES Manual, “an alcohol-related incident occurs when the commander confirms, by a preponderance of the evidence, that the willful ingestion of alcohol contributed to an event in which the MRO committed a violation of the UCMJ or a comparable civilian offense. If the alcohol-related incident results in a conviction under the UCMJ or in a *civilian jurisdiction*, report the incident and subsequent disciplinary action . . . *via a DC report*.” The Board determined that your reporting chain properly rendered your fitness report adverse in accordance with the PES Manual. Contrary to your contention, your fitness report was processed in January 2016, months after your DWI case was adjudicated in civil court. The Board thus concluded there is no probable material error, substantive inaccuracy, or injustice warranting removal of your fitness report. 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,

12/11/2024

█