



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

██████████
Docket No. 11005-24
Ref: Signature Date

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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 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.

The Board carefully considered your request to remove your 15 July 2022 Unit Punishment Book (UPB), which documents your Non-judicial punishment (NJP). The Board considered your contention that your NJP was imposed before a final decision was reached by the civilian court. As well as your assertion that the subsequent dismissal of your DWI charge and acquittal, on 30 April 2024, renders the NJP unjust and you should have been given the benefit of the doubt during the NJP proceedings.

The Board noted that, on or about 30 June 2022, you were arrested for Driving While Intoxicated (DWI). According to the probable cause summary, the incident included a red light violation, physical signs of intoxication, admittance to drinking, poor performance on the standardized field sobriety tests (SFST's), and two positive preliminary breath tests (PBTs). On 15 July 2022, your Commanding Officer (CO) imposed NJP for a violation of Article 113, Drunken or reckless operation of a vehicle of the Uniform Code of Military Justice (UCMJ), specifically for operating a vehicle with a blood alcohol concentration (BAC) of 0.09, exceeding the applicable limit. You were afforded your Article 31 rights, your right to demand trial by court-martial in lieu of NJP, and the opportunity to consult legal counsel; all of which you acknowledged. You did not appeal the NJP. Punishment included reduction in rank to corporal (E-4), forfeiture of

pay, 30 days restriction and extra punitive duties, with the reduction in grade suspended for six months unless sooner vacated.

The Board considered your claim that NJP was unjust because the civilian court later dismissed the DWI charge. However, the Board noted military and civilian justice systems operate under separate jurisdictions and military commanders retain discretion to pursue NJP regardless of civilian proceedings. Additionally, the NJP standard of proof, which is a preponderance of the evidence, is separate and distinct from the “beyond a reasonable doubt” standard applied in civilian courts. The Board determined your CO’s decision to impose NJP was based upon sufficient evidence, including your admittance to drinking, two positive PBT’s, and your BAC; which established that you violated Article 113 of the UCMJ. Thus, the Board determined your CO acted within his discretionary authority, and conducted your NJP pursuant to the Manual for Courts-Martial (2019 ed.). Moreover, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. The Board found your evidence insufficient to overcome this presumption. Thus, the Board 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.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. 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,

1/16/2025

