



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

██████████
Docket No. 11227-24
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 28 January 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 carefully considered your request to remove your 17 January 2024 Unit Punishment Book (UPB)/non-judicial punishment (NJP) and associated Administrative Remarks (Page 11) counseling entries. You also request delivery of your appointment to Gunnery Sergeant (GySgt/E-7). The Board considered your statement and contention that you were being made an example of regardless of the lack of severity and being found not guilty by both the civilian court and at the Magistrate Hearing. You claim that you were found asleep in your vehicle with the engine running by the ██████████ at 0200 on 18 November 2023. You admit that you were intoxicated; however, you were not driving, nor did you intend to drive. You also claim that you were never charged with Driving Under the Influence (DUI) in civil court and you were found not guilty by the Magistrate.

The Board determined that your NJP is valid in accordance with the Manual for Courts-Martial (2024 ed.). In this regard, the Board noted that you received NJP for violating Uniform Code of Military Justice (UCMJ) Article 113 for the drunken or reckless operating a vehicle. The Board also noted that you were advised of your Article 31, UCMJ Rights, you accepted NJP, certified that you were afforded the opportunity to consult with a military lawyer, and you declined to appeal your Commanding Officer's (CO's) finding of guilt. On 17 January 2024, you were

issued Page 11 entries regarding your NJP and notifying you of your restriction from promotion to the next higher grade for four months due to your NJP. The Board also noted that you acknowledged the entries and, although you elected to submit a statement, there is no evidence of the statements in your official record.

Based on a totality of the evidence and in accordance with the MCM, the Board determined that your CO acted within his/her discretionary authority when determining that you violated Article 113, UCMJ. In this regard, Article 113 applies to any person subject to the UCMJ who operates or is in actual physical control of any vehicle, aircraft, or vessel while drunk or when the alcohol concentration in the person's blood or breath is equal to or exceeds the applicable limit. The MCM further defines physical control and actual physical control as "the present capability and power to dominate, direct, or regulate the vehicle, vessel, or aircraft, either in person or through the agency of another, regardless of whether such vehicle, aircraft, or vessel is operated. For example, the intoxicated person seated behind the steering wheel of a vehicle with the keys of the vehicle in or near the ignition but with the engine not turned on could be deemed in actual physical control of that vehicle." In your case, you admitted to being seated behind the steering wheel of your vehicle, with the key in the ignition, and the vehicle turned on. The Board also determined that a conviction for DUI is not a required element of Article 113, UCMJ. The civil court and Magistrate decisions are not binding on your CO's authority to impose NJP. The Board further determined that your CO relied upon a preponderance of evidence that would have included your admission and MCM guidance regarding physical control of a vehicle.

Concerning your promotion to GySgt, the Board noted that the CMC revoked your selection by the Fiscal Year 2024 promotion selection board. The CMC noted that you received NJP and a 6105 counseling entry; additionally, you were relieved for cause due to loss of trust and confidence as a Drill Instructor on 20 February 2024. In accordance with the Marine Corps Enlisted Promotion Manual, Commanders are solely responsible for ensuring that all significant adverse information is reported to CMC (MMPR-2) while the board is in session or any time prior to a Marine's seniority number being reached. The Board also noted that the final decision on the Marine's promotion status will be made by the CMC. Accordingly, the Board determined that the CMC acted within his discretionary authority when removing your name from the promotion selection list.

Moreover, the Board relies on a presumption of regularity to support the official actions of public officers, in the absence of substantial evidence to the contrary, the Board will presume that they have properly discharged their official duties. The Board found your evidence insufficient to overcome this presumption. 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,

2/24/2025

