

## **DEPARTMENT OF THE NAVY**

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

> Docket No. 12331-24 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.

A three-member panel of the Board, sitting in executive session, considered your application on 4 March 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 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.

On 21 October 2021 you were cited onboard for Driving Under the Influence, (DUI). The report stated you hit a parked car, that the officer smelled alcohol, and observed you to be unsteady on your feet, using a vehicle for balance. The report also noted your answers to questions were incoherent and incomplete and your eyes were bloodshot. Your commanding officer (CO) imposed nonjudicial punishment (NJP) and counseled you for violating Article 92 (Failure to Obey Order) and Article 113 (Drunken or Reckless Operation of a Vehicle) of the Uniform Code of Military Justice (UCMJ) on 2 March 2022. You were subsequently given an adverse fitness report as a result of the NJP. On 16 February 2023, Headquarters, U.S. Marine Corps (HQMC) notified you that your name had been removed from the Fiscal Year (FY) 2022 Gunnery Sergeant Selection List.

The Board carefully considered your request to remove from your official military personnel file (OMPF) the Unit Punishment Book entry denoting the 2 March 2022 NJP, Administrative Remarks Page 11 counseling entries of 2 March 2022, your rebuttal to the Page 11 entries, and an adverse fitness report covering the period 1 January 2022 to 2 March 2022. You also requested removal of the Revocation of Section Letter and reinstatement of your Fiscal Year 2022 selection to gunnery

sergeant. You argue there was no evidence to support the charges as the US District Court for the dismissed the charges without prejudice on 23 May 2022. You contend the NJP is unjust and provided two statements from Marines who state that you did not appear to be inebriated on the date of the incident.

The Board determined the command properly notified you of the charges against you, the potential punishment, and the right to refuse NJP. You accepted NJP, the standard to determine guilt at NJP is preponderance of the evidence, which is a lower bar than the beyond a reasonable doubt standard at a court-martial. The Board further found that the command properly afforded you your right to present evidence at the NJP and to appeal that decision. In addition, the Board determined your CO had sufficient evidence to find you guilty at NJP, to counsel you, and to issue you Page 11 entries based on the evidence provided in the incident report and statement of probable cause. The Board further noted that you provided no evidence that your sentence was unjust as the sentence imposed was within the legal limits. With respect to the fitness report, you have not exhausted all administrative remedies; requests to remove a fitness report must be first submitted to HQMC, Performance Evaluation Review Board. Consequently, the Board determined that the NJP and Page 11 entries are valid and shall remain in your OMPF.

Finally, 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 and determined that your CO acted within his discretionary authority and conducted your NJP pursuant to the Manual for Courts-Martial (2019 ed.). As a result, the Board found that your revocation of promotion to gunnery sergeant was not unjust and in accordance with the Enlisted Promotion Manual. 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.

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.

