



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

██████████
Docket No. 12400-24
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 25 February 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 a personal appearance with or without counsel will 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.

The Board carefully considered your request to remove the 14 March 2023 Administrative Remarks 6105 (Page 11) counseling entry and rebuttal statement. The Board considered your contention that the charge for an open container was dismissed in civil court on 9 March 2023 before you received the counseling. You also contend it is unjust to receive a counseling for something you were found not guilty of in a court of law. You claim that you were in constant communication with your command about the court proceedings and they were aware of the dismissal before issuing the counseling entry. Furthermore, you elected to write a rebuttal and submitted it on the fifth business day; however, the rebuttal was not submitted with the counseling entry.

The Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a Page 11 entry counseling you for the reckless operation of vehicle. The entry also noted that you were detained by law enforcement for

speeding in excess of 25 miles per hour and for having an open container of alcohol in your vehicle. The Board noted, too, that you acknowledged the entry and, although you elected to submit a statement, there was no evidence of a rebuttal statement in your record. The Board, however, determined that the contested entry was written and issued according to the MARCORSEPMAN. Specifically, the entry provided written notification concerning your deficiencies, specific recommendations for corrective action, where to seek assistance, the consequences for failure to take corrective action, and it afforded you an opportunity to submit a rebuttal. Moreover, the Marine Corps Individual Records Administration Manual directs commanders to make a service record book entry after counseling a Marine for any alcohol-related misconduct. The Board also determined that your Commanding Officer (CO) acted within his/her discretionary authority when determining that your misconduct was matter essential to record as it was his/her right to do.

Concerning your rebuttal statement, the Board determined your evidence is insufficient to support your statement that the rebuttal was submitted. In this regard, the Board noted that the rebuttal is not dated, and the screen shot is not sufficient to conclude the rebuttal was properly submitted and received by your command. Concerning the civil court decision to dismiss the charge for an open container, the Board found no evidence that the counseling entry was issued prior to the civil court's decision. Regardless, the civil court's decision is not binding your CO's authority to document misconduct in a counseling entry. 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, 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,

3/13/2025

