



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

██████████
Docket No. 1023-25
Ref: Signature Date

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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 6 May 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, as well as the 13 November 2024 decision furnished by the Marine Corps Performance Evaluation Review Board (PERB), and 10 September 2024 advisory opinion (AO) provided to the PERB by the Manpower Management Division Records and Performance Branch. The AO was provided to you on 13 November 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 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 modify the fitness report for the reporting period 1 June 2023 to 19 November 2023 by removing the documented adversity and the Reporting Senior (RS) and Reviewing Officer (RO) directed comments. The Board considered your contention that the Page 11 from which the derogatory material is derived is not in your official record—a failure by the chain of command that should not make this report adverse. You also contend the Page 11 lists charges that are expunged from your civil criminal record—there are no charges nor convictions against you, thus listing charges in the Page 11 is unjust. You also contend the Page 11 was written before the suspected offenses were adjudicated in civil court, which violates the Marine Corps Performance Evaluation System (PES) Manual requirement that, "[o]nly offenses, whether UCMJ or civilian, that have been fully adjudicated may be mentioned in the fitness report. Civilian offenses that have not been adjudicated cannot be indirectly introduced into the fitness report by capturing the allegation on a page 11 entry and then included as derogatory material." You claim all charges were dismissed and expunged from your record in August 2023, the Page 11 was written before

adjudication, therefore, it is unjust in its reference to non-existent charges. The expungement order specifically stipulates, "the court finds that the continued existence and possible dissemination of information relating to the arrest of the petitioner causes or may cause circumstances that constitute a manifest injustice to the petitioner."

The Board, however, substantially concurred with the PERB's decision that you did not demonstrate probable material error, substantive inaccuracy, or injustice warranting modification 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 fitness report for receiving derogatory material. Specifically, a Page 11 entry on 1 June 2023 due to an alcohol-related incident, which resulted in your hospitalization and civilian charges for misdemeanor Drunk in Public; misdemeanor Obstruction of Justice; and felony Assault on Law Enforcement. In your statement, you acknowledged that the error was yours and you have taken full ownership. You also indicated that all charges were dismissed and expunged from your record on 24 August 2023.

The Board determined your contention regarding the Page 11 not being in your record lacks merit. The Page 11, the Report of Misconduct, the Board of Inquiry Report, and all related derogatory material are present in your record. Concerning the validity of the Page 11 entry, the Board determined that the Page 11 entry is valid and was issued in accordance with the Marine Corps Individual Records Administration Manual (IRAM). The Board also determined that your argument that expungement from your criminal civil record should result in expungement from your military record lacks merit. In this regard, the civil court findings have no bearing on a Commanding General's authority to issue a counseling entry. Your record clearly establishes the fact that an alcohol-related incident occurred. The IRAM requires commanders to document in the service record all alcohol related incidents. The Court did not find you innocent nor determine that you did not violate the law, instead the Court required you to meet certain conditions, if met, the court would consider expungement of your criminal record. According to the PES Manual, it is irrelevant whether charges are dismissed or expunged from civil court records after fulfilling legal obligations. Such actions do not alter the nature of the initial misconduct. There was no requirement to withhold administrative action pending the ruling on your request for expungement. 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.

Sincerely,

5/19/2025

Deputy Director

Signed by: