



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

██████████  
Docket No. 1071-25  
Ref: Signature Date

████████████████████  
████████████████████████████████  
████████████████████████████  
████████████████████████████████████  
████████████████████

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 13 August 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 also considered the 7 April 2025 advisory opinion (AO) furnished by the Navy Office of Legal Counsel (BUPERS-00J) and your response to the AO.

The Board determined that a 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.

The Board carefully considered your request to remove your fitness report for the reporting period 1 May 2022 to 30 April 2023, 6 March 2023 Final Civil Action Report (FCAR), 29 November 2023 Notification of Board of Inquiry (BOI), and any reference to allegations of misconduct based on your arrest. The Board considered your statement and contentions that:

- (1) The payment of a fine in the ██████████ is not an admission of guilt nor conviction under U.S. law, nor is there sufficient due process protection with such foreign court proceeding that warrant any determination by military authorities that resulted in a conviction. You merely paid a fine and received no conviction;

- (2) The term “indicted” implies an indictment similar to U.S. laws;
- (3) The offense for which you were required to show cause is not an offense under the Uniformed Code of Military Justice (UCMJ). For an officer to be processed for separation for an allegation of misconduct occurring in a foreign country, the offense alleged must be prohibited by the UCMJ. The alleged offense of driving in ██████████ with an alleged blood alcohol concentration (BAC) of a mere .04 percent is not an offense under the UCMJ;
- (4) The findings of the ██████████ court do not meet the elements of Article 113, UCMJ;
- (5) Including any language about a conviction was improper, as the proceeding did not result in a conviction, just a fine for a traffic violation; and
- (6) The BOI validated your denial of the allegations and properly found that you did not commit the alleged misconduct.

To assist in reviewing your petition, the Board obtained the PERS-00J AO. According to the AO, which was considered unfavorable to your request, the facts are undisputed that you pleaded to driving under the influence (DUI) and were found guilty in ██████████ Summary Court; which is a criminal forum. The AO thus concluded your contention that you were not convicted fails and you have not overcome the presumption of regularity.

In response to the AO, you contend there is no foreign court conviction for a mere traffic ticket. You argue that you were not indicted, and your payment of a fine is not a conviction under ██████████ law. No trial was held; thus, it can be concluded that you did not receive a conviction. You also argue that since the BOI did not find sufficient evidence of any misconduct, there was no requirement to consider separation.

In its review of your request and all available evidence, the Board determined that no relief is warranted. In reaching its decision, the Board observed that it is not an investigative body and 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.

In this regard, the Board noted the following:

On 10 December 2022, while assigned at ██████████ ██████████ you were stopped at a sobriety checkpoint, ██████████ police administered a Kitagawa Balloon test, which measured your alcohol per liter of expired breath above 0.15 mg/l (the equivalent of .03% BAC). Your BAC was .048 percent, over the ██████████ limit of .03 percent. You were subsequently arrested for DUI and transferred to naval custody. While in custody, you were advised of your rights as a military member under ██████████ investigation and the maximum punishment of three years confinement or ██████████. You were also advised of your Article 31(b) Rights, UCMJ for Article 92. Your driving privileges were suspended, you were issued a citation for DUI, and you acknowledged that you tested at

0.21mg/L (0.40% BAC). On 21 February 2023, you pleaded guilty in ██████████ Summary Court and you agreed to pay a fine of ██████████

On 6 March 2023, the Commanding Officer (CO), ██████████ issued a FCAR noting your detainment for DUI by ██████████ police and Summary Court foreign conviction.

You received the contested Periodic/Regular fitness report in which the performance trait for “Military Bearing/Character” was marked 2.0. As justification, your CO commented that you received a Summary Court foreign conviction on 21 February 2023 and paid a ██████████ fine for DUI while having a recorded BAC of .15mg/l or more in violation of local law Article 117-2-2. In your statement, you explained that you were advised to accept a guilty plea for the ██████████ citation, as is customary for such offenses. You stated that the matter was quickly resolved, you accepted responsibility and asserted that your overall performance deserved a higher grade because this incident was not demonstrative of the entire reporting period.

Commander, Navy Personnel Command reviewed the FCAR and determined there was sufficient evidence to require you to show cause for retention. On 13 February 2024, your BOI unanimously found that there was not sufficient evidence to warrant your separation for cause.

The Board, however, substantially concurred with the AO and determined that your conviction for DUI is more than a mere traffic violation. You were found guilty in ██████████ Summary Court, a criminal forum, and you were fined ██████████ or incarceration in lieu of payment of the fine. The Board noted you admitted to the DUI and pleaded guilty to the crime. The Board also determined that you were provided due process by the foreign court. When you were arrested, the Board noted that you were properly advised of your Article 31(b) Rights, you acknowledged those rights and elected to remain silent. You were properly notified of the charge for DUI, you acknowledged that your BAC was .048 percent, an amount in excess of the legal limit, you were afforded access to ██████████ counsel, and you availed yourself of that access.

The Board determined that the offense for which you were required to show cause is a violation of the UCMJ. Specifically, your conduct was a violation of UCMJ Article 92 is a failure to obey an order or regulation and applies to any person subject to the UCMJ. Operating a vehicle with a BAC above .03 percent is a violation of the UCMJ according to ██████████ Order 1050.1, which states, “In ██████████, driving with a blood alcohol content (BAC) of .03 percent or greater is considered a violation of ██████████ law and U.S. regulations governing personnel stationed in or transition through ██████████.” Moreover, ██████████ ██████████ Order 5560.1A provides that, “No person subject to this Order may operate or be in physical control of any motor vehicle while under the influence of intoxicants, including intoxicating beverages, drugs, or any combination thereof. If a person’s BAC is determined to be 0.03 to 0.079 percent by weight of alcohol in the person’s blood, the person shall be presumed to be DUI.” The regulation goes on to clarify that “██████████ police determine the degree of intoxication by use of a ██████████ Balloon test, which measures milligrams of alcohol per liter of expired breath. In accordance with ██████████ Road Traffic Law Number 105 when a reading of 0.15 mg/l (the equivalent of .03% BAC) of expired breath is obtained, it shall be presumed for the purposes of prosecution in ██████████ courts that the person was under the influence of

intoxicating alcohol.” The Board also determined that your misconduct constituted a violation of UCMJ Article 113, by operating or physically controlling a vehicle while drunk or when the alcohol concentration in the person’s blood or breath is equal to or exceeds the applicable limit. In your case, your BAC was clearly more than the ██████████ legal limit. The fact that the offense occurred in ██████████ and not in the United States does not invalidate or diminish your conviction in the ██████████ Summary Court.

Concerning your BOI findings, the Board determined that your BOI was a separate and distinct process from the submission of your FCAR and your court proceedings. According to 10 U.S.C. section 1182, BOIs are convened to receive evidence and make findings and recommendations as to whether an officer on active duty should be retained on active duty, provide a fair and impartial hearing, and to recommend a characterization of service if the BOI finds sufficient evidence to warrant separation. The scope of a BOI is not judicial nor are they convened to adjudicate misconduct. Contrary to your argument, the BOI’s decision to retain you for naval service is not tantamount to a validation of your denial or a finding that you did not commit misconduct. This is supported by the 23 August 2024 Status in the Navy letter, which notified you that the determination by the BOI does not preclude or limit the use of the FCAR in future administrative or other proceedings.

Accordingly, the Board determined that the FCAR was submitted in accordance with MILPERSMAN 1611-010, which requires a commander to “keep PERS-834 informed of the status and disposition of all misconduct cases where an officer has been arrested in connection with or charged with a civil offense.” The Board also determined that your contested fitness report is valid as written and filed in accordance with the applicable Navy Performance Evaluation System Manual (EVALMAN). The EVALMAN permits commenting on misconduct that has been established through reliable evidence to the reporting senior’s satisfaction. Finally, based on its finding that you were properly directed to show cause for retention due to your DUI conviction, the Board found no basis to remove any derogatory material associated with the BOI process.

In conclusion, the Board found your evidence insufficient to overcome the presumption of regularity and 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,

8/27/2025

[REDACTED]

Executive Director

Signed by: [REDACTED]