

## **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:

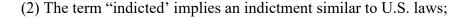
This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found 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 solution 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;



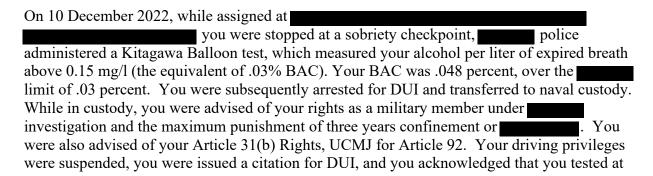
- (3) The offense for which you were required to show cause is not an offense under the Uniformed Code of Military Justice (UCMJ). For an officer to be processed for separation for an allegation of misconduct occurring in a foreign country, the offense alleged must be prohibited by the UCMJ. The alleged 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.

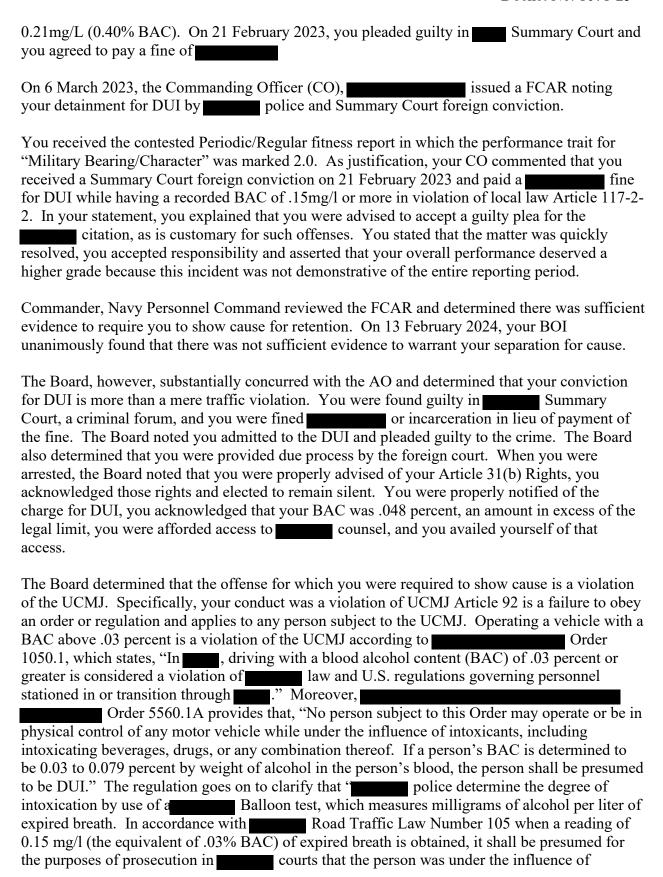
To assist in reviewing your petition, the Board obtained the PERS-00J AO. According to the AO, which was considered unfavorable to your request, the facts are undisputed that you pleaded to driving under the influence (DUI) and were found guilty in Summary Court; which is a criminal forum. The AO thus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

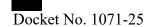
In response to the AO, you contend there is no foreign court conviction for a mere traffic ticket. You argue that you were not indicted, and your payment of a fine is not a conviction under law. No trial was held; thus, it can be concluded that you did not receive a conviction. You also argue that since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







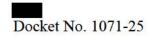
intoxicating alcohol." The Board also determined that your misconduct constituted a violation of UCMJ Article 113, by operating or physically controlling a vehicle while drunk or when the alcohol concentration in the person's blood or breath is equal to or exceeds the applicable limit. In your case, 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.

