



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

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Docket No. 26-22
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 28 April 2022. 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 applications, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies.

The Board carefully considered your request to remove your Administrative Remarks (Page 11) 6105 counseling entry dated 4 February 2021 and associated rebuttal. The Board considered your contention that the entry was unjust and more severe than it needed to be. The Board also considered the statement you provided from the commanding officer who wishes to grant you clemency and remove the entry.

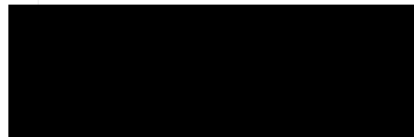
By signing the Page 11 6105, your commanding officer (CO) indicated that he believed it to be appropriate based on the facts and circumstances, and using a preponderance of the evidence standard. The Board thus determined that the issuing officer was well within his discretionary authority to issue the counseling entry at the time, and that the entry met the counseling requirements in accordance with the Marine Corps Separations Manual. Specifically, the Board noted that the entry provided written notification concerning your deficiencies as a result of a command directed urinalysis test, specific recommendations for corrective action indicating any assistance available, a comprehensive explanation of the consequences of failure to successfully take the recommended corrective action, and a reasonable opportunity to undertake the recommended corrective action. You were afforded the opportunity to rebut the counseling, and your rebuttal was considered by the Board.

The Board noted that a Page 11 6105 counseling is given a presumption of regularity which requires you to provide substantial evidence that the CO's decision was unjust or was materially in error. The Board determined that you provided insufficient evidence to rebut this presumption of regularity. The Board took into consideration your rebuttal statement and the CO's favorable endorsement; however, the Board noted that the CO failed to provide any justification as to the granting of clemency and removal of the contested entry. The Board also noted your positive urinalysis for THC was identified through a command directed urinalysis and you provided no evidence to prove there was an error in your positive test results. The Board thus determined that the Page 11 6105 is factual as to the events that occurred. The Board further determined that your CO adhered to the requirements in accordance with the Individual Records Administrative Manual, and there is nothing that precluded your CO from issuing the counseling entry. The Board thus concluded that the Page 11 6105 counseling entry does not constitute probable material error or injustice warranting removal from your official military personnel file.

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,

5/19/2022

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Executive Director

Signed by:

A black rectangular redaction box covering the name of the Executive Director.