



**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: 2147-22  
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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 21 June 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 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 24 April 2022 advisory opinion (AO) provided by the Navy Personnel Command (NPC), Office of Legal Counsel (PERS-00J) and your response to the AO.

The Board carefully considered your request to remove your 23 May 2018 Disposition of Offense(s)/non-judicial punishment (NJP). The Board considered your contention that the NJP should be removed due to legal error. Specifically, the commanding officer (CO) issued NJP despite his belief that you did not wrongfully use an illegal substance. You also contend that the administrative separation (ADSEP) board unanimously concluded that you did not commit the offense and the polygraph examination concluded that you were telling the truth when you said that you did not knowingly use drugs. You further contend that the appeal authority upheld the NJP without considering any of the evidence that was presented to the CO concerning your innocence. You claim that you unknowingly ingested a trace amount of cocaine while consuming what you believed to be an alcoholic drink. You also claim that your exemplary service record justifies removal of the NJP.

The Board, however, substantially concurred with the AO that your NJP is valid. In this regard, the Board that noted you received NJP for violating Article 112a, Uniform Code of Military Justice (UCMJ) for testing positive for cocaine during a command urinalysis. The Board also noted that the ADSEP board unanimously found that the preponderance of the evidence does not support the acts, omissions, or circumstances alleged and recommended your retention in the Navy. The Board noted, too, your statement, polygraph results, and character statements, however, the Board determined that your CO did not commit a legal error by finding you guilty of violating Article 112a, UCMJ. The Board found no evidence that your CO believed that you did not wrongfully use cocaine and, other than your assertion, you provided none. The Board also determined that the CO is the fact-finder at NJP, as such, he/she is authorized to appraise the facts and circumstances of a case, and render a decision based upon a preponderance of the evidence and their discretionary authority.

Concerning the findings of your ADSEP board, the Board determined that NJP and the ADSEP board are separate processes with specific functions. An ADSEP board is administrative in nature with the fundamental purpose of determining your suitability to serve on the basis of your conduct and your ability to meet and maintain the required standards of performance. NJP is disciplinary in nature and provides commanders with a means to swiftly maintain good order and discipline. The Board also determined that it is not a material error or injustice for two separate fact-finding bodies to arrive at different conclusions, thus the ADSEP board's findings does not amount to strong evidence that NJP was wrongfully imposed in your case. Moreover, the Board noted that according to the *Manual for Courts-Martial* (2016 ed.) (MCM), "knowledge of the presence of the controlled substance may be inferred from the presence of the controlled substance in the accused's body or from other circumstantial evidence." The Board also determined that your positive urinalysis result by itself may satisfy the UCMJ Article 112a knowledge requirement. Further, 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, will presume that they have properly discharged their official duties. The Board found your evidence insufficient to overcome this presumption. As a result, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the NJP from your record. 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,

7/5/2022

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Executive Director  
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