



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: 3245-22

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 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.

The Board carefully considered your request to remove your 24 May 2021 Administrative Remarks (page 11), associated rebuttal statement, 11 June 2021 page 11 entry, and all documents related to your positive urinalysis. You also request to remove your fitness report for the reporting period 1 January 2021 to 31 December 2021 and to change the date of your Marine Corps Good Conduct Medal (MCGCM). The Board considered your contention that the allegations were proven to be without basis by the administrative separation (ADSEP) board.

The Board noted that pursuant to the Marine Corps Individual Records and Administration Manual (IRAM), on 24 May 2021, you were issued a page 11 entry appropriately counseling you for the wrongful use of Fentanyl, a schedule II controlled substance that was identified through a urinalysis and confirmed by the Navy Drug Lab. On the same date, you were notified that your special duty assignment (SDA) pay was being terminated. The Board noted that you acknowledged both entries and elected to submit a statement. In your statement, you denied using Fentanyl. On 11 June 2021, you were notified that your SDA pay was being terminated due to your relief for cause. The Board determined that your contested page 11 entries were issued and written according to the IRAM. Specifically, the entries provided written notification

concerning your deficiencies and afforded you the opportunity to submit a rebuttal. Moreover, your commanding officer (CO) signed the entries and determined that your misconduct was a matter forming an essential and permanent part of your military record, as it was his/her right to do.

Concerning the findings of your ADSEP board, the Board determined that an ADSEP board's fundamental purpose is to determine your suitability to serve on the basis of your conduct and your ability to meet and maintain the required standards of performance, thus, the results of your ADSEP proceeding does not mean you were exonerated from your misconduct. Thus, the Board determined that an ADSEP board's findings are not binding on a CO's discretionary authority to issue a page 11 entry and that your positive urinalysis result, by itself, was sufficient for the CO to determine that misconduct occurred. Moreover, 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. Accordingly, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the page 11 entries and rebuttal statement. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Regarding your MCGCM date, the Board found no evidence that your MCGCM date was reset and you provided none. Therefore, the Board determined the issue was not yet ripe for the Board's consideration. Further, concerning your request to remove your fitness report for the reporting period 1 January 2021 to 31 December 2021, the Board determined that you have not exhausted your administrative remedies. The Performance Evaluation Review Board (PERB) is the initial action agency for fitness report appeals, therefore, you must submit your request to the PERB according to the Marine Corps Performance Evaluation Appeals Manual.

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,

7/6/2022

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Executive Director

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