



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

[REDACTED]  
Docket No. 4224-22  
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
[REDACTED] XXX XX [REDACTED] USMC

Ref: (a) Title 10 U.S.C. § 1552  
(b) Marine Corps Manual (2019)  
(c) Marine Corps Order 1900.16 CH 2 (MARCORSEPMAN)  
(d) Memorandum PDSAD (M&RA) 4 Aug 21  
(e) MCO P1070.12K w/ ch 1 (IRAM)

Encl: (1) DD Form 149 w/enclosures  
(2) Administrative Remarks (Page 11) counseling entry 4 May 21  
(3) HQMC 1070 JPL Memo dtd 31 Aug 22

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his naval record be corrected by removing an Administrative Remarks (Page 11) counseling, enclosure (2), from his official military personnel file (OMPF).

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 8 September 2022 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval records, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, found as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.

b. On 13 April 2021, Petitioner took a urinalysis and hair follicle test. On 4 May 2021, the Commanding Officer (CO) Headquarters Battalion, [REDACTED], issued enclosure (2), a Page 11 entry for violating Article 112(a) of reference (b), by wrongfully using controlled substances as confirmed by a hair follicle examination. Enclosure (2) further stated that Petitioner was being processed for administrative separation for drug abuse pursuant to reference (c). On 24 February 22, the Defense Services Organization, [REDACTED], notified Petitioner that the notification of separation proceedings was canceled.

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c. Petitioner contends enclosure (2) is erroneous and unjust because he did not take a controlled substance, the urinalysis test that he took was negative, and that the hair follicle test exam is not authorized and not reliable. Petitioner noted that the Principal Deputy Assistant Secretary of the Navy (Manpower and Reserve Affairs) expressly stated, in reference (d), that the hair follicle testing methodology is unauthorized in the Department of the Navy and may not be used by commands for administrative and disciplinary purposes.

d. Headquarters Marine Corps (JPL) provided an advisory opinion (AO), enclosure (3), recommending removal of enclosure (2). The AO noted that the evidence used by the command to determine Petitioner violated Article 112(a) is invalid per reference (d). The AO also found that the formal counseling was factually deficient. The AO noted that the counseling stated that Petitioner wrongfully used control substances in violation of Article 112(a) but did not state what substance Petitioner allegedly took. Furthermore, Article 112(a) requires that the controlled substance must be listed in clause (1) of the Article or on a list of controlled substances listed in Schedules I through V of the Controlled Substances Act, 21 U.S.C. § 812. Finally, the AO noted per reference (e) “a command should not make entries on page 11 which concern administrative discharge...if they do not, upon final review, result in discharge or reduction.”

## CONCLUSION

Upon review and consideration of all the evidence of record, the Board determined that Petitioner’s request warrants relief. The Board noted that Petitioner’s urinalysis test was negative and concurred with the AO that the counseling was invalid as the counseling was factually deficient and not in accordance with references (d) and (e). Consequently, the Board found the 6105 erroneous and unjust and determined that Petitioner’s Page 11 entry, enclosure (2), shall be removed.

## RECOMMENDATION

In view of the above, the Board recommends the following corrective action.

Remove Petitioner’s 4 May 2021 Page 11 entry regarding violation of Article 112(a).

4. It is certified that a quorum was present at the Board’s review and deliberations, and that the foregoing is a true and complete record of the Board’s proceedings in the above-entitled matter.
5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing

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corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

9/20/2022

[REDACTED]  
Executive Director

Signed by: [REDACTED]