



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

█
Docket No: 4787-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █
█ USMC

Ref: (a) Title 10 U.S.C. § 1552
(b) MCO 1070/12K (IRAM)

Encl: (1) DD Form 149 w/enclosures
(2) Unit Punishment Book of 22 July 2021
(3) Administrative Discharge Board Report: Findings and Recommendations of 3 March 2022
(4) Page 11 of 9 May 2022

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 to remove enclosure (2), a Unit Punishment Book (UPB) entry which documented his 22 July 2021 Non Judicial Punishment (NJP), to restore his rank resulting from his NJP, and be granted back pay associated with his restoration of rank.

2. The Board, consisting of █, and █, reviewed Petitioner's allegations of error and injustice on 2 August 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 the 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, finds as follows:

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

b. Petitioner received NJP for violation of Articles 92 and 112a, Uniform Code of Military Justice (UCMJ) for wrongfully using cocaine. Petitioner acknowledged the entry and chose not to make a written rebuttal. Enclosure (2).

c. On 3 March 2022, an Administrative Separation (ADSEP) Board determined a preponderance of the evidence did not prove any of the acts or omissions alleged in the notification. The ADSEP Board recommended Petitioner be retained in the Marine Corps.

d. On 9 May 2022, Petitioner was issued a Page 11 counseling stating that he understood and acknowledged that he was processed for administrative separation and, in accordance with the

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

[REDACTED] USMC

policy, a recommendation of "Retention" was directed by the Commanding General, Marine Expeditionary Force. Petitioner chose not to make a rebuttal to the counseling.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an error and injustice warranting partial relief. The Board noted that, in accordance with reference (b), Page 11 entries regarding administrative discharge will not be made unless, upon final review, the result is in discharge or reduction. Here, the Board noted that the ADSEP Board voted to retain the Petitioner and therefore deemed the entry invalid. The Board thus concluded that enclosure (4) shall be removed from Petitioner's official military personnel file.

Notwithstanding the recommended relief, the Board determined Petitioner's NJP should not be set aside and enclosure (2) shall remain in his record. While the Board considered the ADSEP Board findings, they noted that there is a sharp and distinct delineation between the ADSEP Board process and NJP. The former process is for the administrative elimination of unsuitable, unfit, or unqualified Marines, while NJP is designed to establish the guilt or innocence of a member accused of a crime and to administer punishment when appropriate. Therefore, an ADSEP Board finding that a member did not commit misconduct does not invalidate associated NJP findings. Based on the positive urinalysis result for cocaine metabolites, the Board determined your Commanding Officer had sufficient evidence to find that you violated Articles 92 and 112a of the UCMJ. The Board thus concluded that there is no probable material error or injustice warranting setting aside your NJP or removing the associated UPB entry from your record. Accordingly, the Board found no basis to grant your request to reinstate your paygrade or award you backpay.

RECOMMENDATION

In view of the above, the Board directs the following partial corrective action. Petitioner's naval record be corrected by removing enclosure (4), his 9 May 2022 Page 11 entry, from his record.

No further relief be granted.

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 Regulation, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing

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

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

8/30/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]