



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

[REDACTED]
Docket No: 5144-22
Ref: Signature Date

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

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

Ref: (a) Title 10 U.S.C. § 1552
(b) MCO P1070/12K (IRAM)

Encl: (1) DD Form 149 w/enclosures
(2) Administrative Remarks (Page 11) counseling entry (undated)
(3) Administrative Remarks (Page 11) 6105 counseling entry of 24 Jan 22
(4) Sr. Mbr, ADB ltr 1000-35 LEGAL of 27 Jun 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 two Administrative Remarks counseling entries due to his violation of Article 112a, Uniform Code of Military Justice (UCMJ).

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 9 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 was issued enclosure (2), an undated Page 11 counseling due to his violation of Article 112a, UCMJ and Marine Corps Order 5300.17, after testing positive for Benzoylgonine, a schedule II controlled substance, during a urinalysis conducted on or about 5 October 2021. Petitioner was also notified that, consequently, it was unlawful for him to receive, possess, ship, or transport firearms or ammunition for personal purposes for a period of 12 months.

c. On 24 January 2022, Petitioner was issued enclosure (3), 6105 counseling due to the aforementioned violation of Article 112a, UCMJ. Petitioner was also notified that he was being processed for administrative separation. Petitioner acknowledged the counseling and chose to

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submit a written rebuttal; however, there is no rebuttal statement in his record, and no counter-entry from his Command stating Petitioner did not submit his rebuttal.

d. On, 27 June 2021, an Administrative Discharge Board (ADB) determined a preponderance of the evidence did not prove any of the acts or omissions alleged in the administrative separation notification. The ADB by a majority vote, recommended Petitioner be retained in the Marine Corps. Enclosure (4).

e. Petitioner contends that the two contested counseling entries should be removed from his record based on the finding of “no basis” as well as the “dismissed” and “retain” recommendation of the ADB.

CONCLUSION

Upon review and consideration of all the evidence of record, The Board found the existence of an error and injustice warranting partial relief. In this regard, the Board noted that the 24 January 2022 6105 at enclosure (3) is no longer in compliance with reference (b), which provides that Page 11 entries which concern administrative discharge will not be made if, upon final review, do not result in discharge. The Board thus concluded that the following sentence, “I understand that I am being processed for the following judicial or administrative action: Administrative Separation with a basis of Misconduct – Drug Abuse” shall be redacted from the counseling entry, and that the modified entry will then be in compliance with reference (b), and it shall remain in his record.

With regard to Petitioner’s contention that the ADB found “no basis” and “dismissed [the allegations]” the Board noted that Petitioner’s Commanding Officer determined, based upon a preponderance of the evidence, that Petitioner violated Article 112a, UCMJ and MCO 5300.17. The Board also noted that there is a distinct delineation between the administrative separation process which has as its purpose the administrative elimination of unsuitable, unfit, or unqualified Marines. The administrative separation process is not intended as, nor does it function as a method to overturn or invalidate a Commanding Officer’s administrative action. The Board noted that it is conceivable and permissible that the two processes with separate considerations and purposes may arrive at different findings. The Board thus concluded that there is no probable material error or injustice warranting the removal of either the undated Page 11 counseling at enclosure (2) for the 6105 counseling entry at enclosure (3).

RECOMMENDATION

In view of the above, the Board directs the following partial corrective action.

Petitioner’s naval record be corrected by redacting the following sentence from his 24 January 2022 6105 counseling entry:

“I understand that I am being processed for the following judicial or administrative action: Administrative Separation with a basis of Misconduct – Drug Abuse.”

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

9/8/2022

[REDACTED]

Deputy Director

Signed by: [REDACTED]