



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

[REDACTED]
Docket No: 5281-22
Ref: Signature Date

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

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

Ref: (a) Title 10 U.S.C. § 1552
(b) MCO P1070/12K (IRAM)
(c) MCO P1400.32D (MARCORPROMAN)

Encl: (1) DD Form 149 w/enclosures
(2) Administrative Remarks (Page 11) 6105 counseling entry of 20 Dec 21 and promotion-restriction entry of 20 Dec 21
(3) Administrative Discharge Board Report: Findings and Recommendations of 13 Jul 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 to remove Administrative Remark (Page 11) 6105 counseling entry for unlawful use of a controlled substance.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 30 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 a Page 11 6105 counseling entry for the unlawful use of a controlled substance, by testing positive for Tetrahydrocannabinol (THC), a schedule I controlled substance, during a urinalysis on or about 20 December 2021. Petitioner also received a Page 11 counseling for being placed in a promotion-restriction status for 12 months due to being processed for administrative separation. Enclosure (2). Later, an administrative Separation (ADSEP) Board found that a preponderance of the evidence did not prove the acts or omissions alleged. Enclosure (3).

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

c. Petitioner argues that there was insufficient evidence to issue the page 11 and relies on the findings of the ADSEP board as substantiation of his claim.

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 determined that the 6105 counseling, at enclosure (2) should be modified. Specifically, the Board noted the statement, "I understand that I am being processed for the following judicial or administrative action: Administrative Separation" is not in accordance with policy since reference (b) states that page 11 entries regarding administrative discharge will not be made unless, upon final review, they result in a discharge or reduction. Therefore, the Board determined the erroneous language needs to be redacted.

The Board also noted that the promotion restriction Page 11 at enclosure (2) is not in accordance with policy and should be removed. Page 11 promotion restriction entries are only authorized up to the rank of corporal. Marines in the rank of sergeant and above will be processed in accordance with paragraph 5200 of Chapter 5 of reference (c).

Notwithstanding the recommended correction below, the Board determined the 6105 counseling was otherwise valid as written. With regard to Petitioner's reliance on the ADSEP board findings, the Board noted that it does not establish the guilt or innocence of a member accused of misconduct. Rather, its purpose is the administrative elimination of unsuitable, unfit, or unqualified Marines. Further, the Board concluded there is no credible or independent evidence to support Petitioner's contentions and that his Commanding Officer's (CO) determination to issue the 6105 counseling was based upon a preponderance of the evidence that Petitioner violated Article 112a of the Uniform Code of Military Justice. The Board thus concluded that there is no probable material error or injustice warranting the removal of the contested 6105 counseling entry.

RECOMMENDATION

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

Petitioner's naval record be corrected by modifying the 20 December 2021 Page 11 as follows:

Redact "I understand that I am being processed for the following judicial or administrative action: Administrative Separation."

Petitioner's naval record be corrected by removing the 20 December 2021 Page 11 promotion restriction.

Any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record, and that no such entries or material be added to the record in the future. This includes, but is not limited to, all information systems or database entries that reference or discuss the expunged material.

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

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.

9/20/2022

[REDACTED]