



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. 6247-22
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 22 November 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 applications, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies. The Board also considered the 18 October 2021 Advisory Opinion (AO) provided by the Office of Legal Counsel (PERS-00J) and your 29 May 2022 response to the AO.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully considered your request to remove all records related to your Detachment for Cause (DFC), Board of Inquiry (BOI), and the 4 August 2020 Status in the Navy letter from your official military personnel file (OMPF). Alternatively, you request "additional BCNR remarks placed in [your] record as addendum to correct the error in factual basis predicated the [DFC]. . ." The Board considered your contentions that the BOI composition was in violation of SECNAV Instruction 1920.6D and that there was insufficient evidence to support the stand-alone basis of substandard performance. The Board also considered your assertion that these records continue to negatively impact your promotion potential, billet opportunities, and a favorable security determination. You argue that the entire case was based upon the positive urinalysis, and there is no other action listed to constitute the underlying basis for substandard performance of duty.

The Board noted that on 25 February 2019, you provided a urine sample as part of an unannounced unit sweep urinalysis which indicated a positive result for D-Methamphetamine and D-Amphetamine. A preliminary inquiry (PI) followed, finding no legitimate lawful explanation as to the presence of these drugs in your body. As a result, on 29 April 2019 you were relieved as the Executive Officer of [REDACTED], and the Commander, [REDACTED] requested your detachment for cause by reason of misconduct due to drug abuse, and that you be made to show cause for retention before a BOI. The DFC request was approved by Deputy Chief of Naval Personnel on 9 December 2019, and on 18 December 2019, you were ordered to show cause for retention before a BOI.

On 30 July 2020, the BOI unanimously found a preponderance of the evidence supported substandard performance – failure to conform to prescribed standards of military deportment. The BOI also found the preponderance of the evidence did not warrant separation for cause. On 4 August 2020, Commander, [REDACTED] ([REDACTED]) notified you that the BOI retained you for naval service.

The Board substantially concurred with the AO. In this regard, the AO determined that none of the arguments you provided, in part or as a whole, support the removal of the your DFC or other contested documents filed in your OMPF. Specifically, MILPERSMAN 1611-010 mandates that a positive urinalysis be reported to [REDACTED] ([REDACTED]) and whether there should be a DFC based on that urinalysis. The Board thus determined the DFC was not an abuse of discretion because it was premised upon a positive urinalysis. As such, it was not unjust and was in compliance with the MILPERSMAN.

With regard to your contention that the composition of the BOI was in violation of SECNAV Instruction 1920.6D, the Board determined that your BOI was conducted pursuant to regulations. Specifically, although the Instruction states the BOI must have at least one member from the same competitive category, it further states that, “in cases involving small competitive categories, isolated geographic locations, or for reasons of operational necessity, the convening authority may waive the competitive category membership requirement if no suitable officer is reasonably available.”

The Board substantially concurred with the AO, noting your positive urinalysis was sufficient to form an underlying basis for both misconduct and substandard performance of duty, and the record reflects you were duly notified of the show cause proceedings based on both misconduct and substandard performance. The Board also noted that according to 10 U.S.C. § 1182, the scope of a BOI is not judicial, but to form findings and recommendations that provide a basis for separation for cause, or retirement in the current grade or a lesser grade, and to present matters favorable to their case on the issues of separation and characterization of service. Moreover, the BOI did not determine you were “not guilty” of misconduct, but rather the preponderance of evidence did not support your misconduct as a basis for separation from the Navy. The Board also determined the BOI’s findings were not binding on your Commanding Officer, who had independent authority to determine whether you committed the misconduct. In particular, the Board noted the record contained strong, unrefuted evidence of your guilt. Additionally, 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 there is no probable material error, substantive inaccuracy, or injustice warranting corrective action.

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,

12/22/2022

