



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

██████████
Docket No. 8446-22
Ref: Signature Date

██
██
██

Dear Petitioner:

This letter is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 31 January 2023. 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 application, together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies.

The Board carefully considered your request to remove your Unit Punishment Book entry, which documents your 18 April 2022 nonjudicial punishment (NJP) for violation of Article 112a of the Uniform Code of Military Justice (UCMJ) for wrongful use, possession, etc. of a controlled substance resulting in a positive urinalysis. The Board also considered your request to remove your 18 April 2022 6105 counseling entry and Page 11 promotion-restriction entry. The Board considered your contention that you were processed for administrative separation (ADSEP) and ultimately retained in the Marine Corps. You argue that the ADSEP board determined the preponderance of the evidence did not prove any of the acts alleged. The Board also considered your claim that you accepted the NJP not realizing that you were admitting guilt. Finally, the Board considered your assertion in order to have your primary military occupational specialty Explosive Ordnance Disposal Technician insignia reinstated, you must have the NJP removed. You assert that you did not use or abuse any controlled substances and that upon notification of the positive urinalysis you believed that you become complacent when purchasing pre-workout supplement, which you later discovered was on the Department of Defense Banned substance list.

The Board noted that prior to the imposition of NJP, you were advised of your rights under Article 31(b) UCMJ, you were given the opportunity to consult counsel, advised of your right to demand trial by court-martial in lieu of NJP, and agreed to accept NJP. Additionally, you provided written matters for the commanding officer's (CO) consideration and requested a personal appearance before the CO. The Board further noted that you acknowledged your rights of appeal on 18 April 2022, but you did not appeal the NJP.

With regards to your contention that the ADSEP Board determined the preponderance of the evidence did not prove any of the acts alleged, and that you were retained, the Board noted that an ADSEP Board is administrative in nature with the fundamental purpose of determining your suitability to serve on the basis of your conduct and your ability to meet and maintain the required standards of performance, while NJP is disciplinary in nature and provides commanders with a means to swiftly maintain good order and discipline. The Board thus determined that it is not a material error or injustice for two separate fact-finding bodies to arrive at different conclusions, and the ADSEP Board's findings are not binding on your CO's finding of guilt at NJP. The Board thus concluded that the NJP and associated counseling entries do not constitute probable material error or injustice warranting corrective action.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. 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,

2/27/2023

