



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

█
Docket No. 29-23
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

Encl: (1) DD Form 149 w/attachments
(2) NAVMC 10132 Unit Punishment Book (UPB), 16 Aug 22
(3) Administrative Remarks (page 11) entries, 16 Aug 22
(4) Defense Service Organization Witness Interview, 2 Nov 22
(5) CG, █ ltr 1400 █, 3 Nov 22
(6) Senior Member ltr 1910 SenMbr, 9 Nov 22
(7) Fitness Report, 1 Apr 22 to 16 Aug 22

1. Pursuant to the provisions of the reference, Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting to remove the 16 August 2022 unit punishment book (UPB)/non-judicial punishment (NJP), 16 August 2022 Administrative Remarks (page 11) entries, and to reinstate his selection for promotion to Staff Sergeant (SSgt/E-6).

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 24 January 2023 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 Petitioner's 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. On 16 August 2022, Petitioner received NJP for the wrongful use of "THC9" a controlled substance, while under control of the armed forces on or about 15 July 2022. Petitioner acknowledged his Article 31, Uniform Code of Military Justice (UCMJ) Rights, accepted NJP, certified that he was afforded the opportunity to consult with a military lawyer and did not appeal the Commanding Officer's (CO's) finding of guilt at NJP. Enclosure (2).

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c. On 16 August 2022, pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), Petitioner was issued a 6105 page 11 entry documenting his NJP. On the same date, Petitioner was issued a page 11 entry notifying him that he is not recommended for promotion to Staff Sergeant. Petitioner acknowledged both entries and did not submit a statement. Enclosure (3).

d. In a 2 November 2022, witness interview conducted by Petitioner's Defense Counsel, the narrative states that, [REDACTED] did not tell anyone that her vape had THC in it, she did not want the Petitioner to get mad and should have told him prior, and [REDACTED] was unpacking and cooking when she went back to the living room and realized that Petitioner had taken a hit of the vape. Enclosure (4).

e. On 3 November 2022, the Commanding General, [REDACTED] recommended the revocation of Petitioner's selection from the Fiscal Year (FY) 2022 SSgt selection list due to being found guilty of Article 112a, UCMJ at battalion level NJP and due to his lack of judgment. Enclosure (5).

f. On 9 November 2022, Petitioner's administrative separation (ADSEP) board determined by majority vote that the preponderance of evidence does not prove any of the acts or omission alleged and recommended that Petitioner be retained in the Marine Corps. Enclosure (6).

g. On 29 November 2022, Petitioner was issued an adverse fitness report for receiving disciplinary action. Petitioner acknowledged the adverse nature of the report and elected not to make a statement. The Third Officer Sighter adjudicated the factual differences and determined that the fitness report was factually correct and properly documented Petitioner actions. The Third Officer Sighter also noted that Petitioner accepted responsibility for his actions and recognized the second and third order of consequences of his actions. Enclosure (7).

h. In his application, Petitioner contends that the UCMJ Article listed on the UPB is incorrect, because he was charged with Article 121 (larceny and wrongful appropriation). Petitioner also contends that during his ADSEP board, the members found "no basis" for administrative separation due to the evidence and character statements provided. Petitioner asserts that the evidence presented, validated that the "THC" consumption was in fact innocent ingestion due to a witness coming forward and explaining how and when the "THC" was consumed. Enclosure (1).

CONCLUSION

Upon careful review and consideration of all the evidence of record, the Board found the existence of an error warranting partial corrective action.

The Board noted that Petitioner's UPB indicates that he was charged with a violation of Article 121 (Larceny and wrongful appropriation) instead of Article 112a (Wrongful use, Possession, etc., of Controlled Substances). The Board, however, determined that this was a scrivener's error. The Board also determined that Petitioner was not unduly prejudiced by the error. The basis for the violation was clearly noted in the UPB and there is no evidence that Petitioner did not understand the basis for the offense during NJP. Further, the Board was not persuaded by

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Petitioner's claim of innocent ingestion. In this regard, the Board noted that Petitioner had the opportunity to provide the innocent ingestion defense during NJP and when issued the page 11 entries, but chose not to do so. Even after the ADSEP board convened, Petitioner failed to submit a statement to address the adverse nature of his fitness report. In fact, the Third Officer Sighter noted that Petitioner accepted responsibility for his actions. The Board determined that according to the MCM, the evidence of THC in Petitioner's system was sufficient evidence for the CO to impose NJP. Moreover, the purpose of an ADSEP board is to determine suitability for continued service, ADSEP boards are administrative in nature and do not determine guilt or innocence. The Board further determined that it is not a material error or injustice for two separate bodies to come to different conclusions. Accordingly, the Board concluded that Petitioner's UPB should be changed to correctly reflect the appropriate UCMJ Article.

Regarding Petitioner's request for reinstatement to the SSgt selection list, the Board determined that Petitioner's request is premature for consideration. The Board found no evidence that the recommendation for revocation has been adjudicated by the Commandant of the Marine Corps.

RECOMMENDATION

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

Petitioner's naval record be corrected by correcting enclosure (2). Change block 22 (Additional Remarks) to reflect Violation of Article 112a: (Wrongful use, Possession, etc., of Controlled Substances) instead of Violation of Article 121 (Larceny and wrongful appropriation).

No other corrections to Petitioner's naval record.

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 Regulations, 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.

2/12/2023

