



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

██████████
Docket No. 341-23
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
(b) MCO 1900.16 (MARCORSEPMAN)
(c) MCO 1070/12K (IRAM)

Encl: (1) DD Form 149 w/enclosures
(2) CO, ██████████ ltr 5300 CO, 4 Jun 19
(3) Drug Demand Reduction Coordinator memo, 5 Jun 19
(4) CO, ██████████ 5830 CO, 15 Jul 19
(5) Administrative Remarks (Page 11) 6105 entry, 17 Apr 20
(6) Senior Member ltr 1910 LSST, 3 Nov 20
(7) CG, ██████████ endo, 17 Dec 20

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 enclosure (5).

2. The Board, consisting of ██████████, and ██████████ reviewed Petitioner's allegations of error and injustice on 7 February 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 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. In correspondence from the Commanding Officer, Aviation Maintenance Squadron 2 (CO, AMS 2), dated 4 June 2019, the CO noted that the command received positive analytical results from the ██████████ for the Petitioner. The drug was identified as Oxymorphone. The CO directed a command inquiry to confirm that no legitimate reason exists for the presence of drugs. After a review of the urine test results, Petitioner's medical record by the Medical Reviewing Officer, the CO determined that there was wrongful use. Enclosure (2).

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c. On 5 June 2019, in a memorandum from the Drug Demand Reduction Coordinator, the Medical Review Officer confirmed his review of Petitioner's medication profile, indicated that there is no legitimate use, and that Petitioner does not have a prescription for a drug which caused the positive urinalysis result. Enclosure (3).

d. In correspondence from the CO, AMS 2, he thoroughly reviewed the command investigation concerning Petitioner and concurred with the finding of fact and opinion of the investigation officer. He recommended Petitioner's administrative separation and non-judicial punishment for violating Uniform Code of Military Justice Article 92 and 112A. Enclosure (4).

e. On 17 April 2020, pursuant to reference (b), Petitioner was issued a 6105 counseling entry for wrongful use of a controlled substance and the entry provided notification that he is being processed for administrative separation. Petitioner acknowledged the entry, and although he chose to submit a statement, he did not turn it in within the required time. Enclosure (5).

f. On 3 November 2020, Petitioner's administrative separation board was held and unanimously determined that the preponderance of evidence did not prove the acts alleged in the notification and recommended Petitioner's retention. On 17 December 2020, the Commanding General, [REDACTED] directed Petitioner's retention. Enclosures (5) and (6).

g. In his application, Petitioner references the aforementioned documents.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an error warranting partial relief.

In this regard, the Board determined that Petitioner's counseling entry was written and issued according to reference (b). The Board noted that Petitioner was processed for administrative separation and he was retained on active duty. As such, the portion of the counseling entry referring to his administrative separation is no longer in compliance with reference (c). The Board thus concluded that the language referencing administrative separation shall be removed. The Board, however, determined that the counseling entry is valid and constitutes a matter of record, based on the confirmed positive urinalysis, and command inquiry confirming that there was no legitimate use and that Petitioner did not have a prescription for a drug which caused the positive urinalysis result.

RECOMMENDATION

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

Petitioner's naval record be corrected by redacting the following language from enclosure (5):

"I understand that I am being processed for the following judicial or adverse administrative action: administrative separation."

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That part of the Petitioner's request for corrective action that exceeds the foregoing be denied.

That no further changes be made 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 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.

3/1/2023

[REDACTED]

Deputy Director

[REDACTED]