



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

██████████
Docket No. 444-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████ ██████████
██████████

Ref: (a) Title 10 U.S.C. § 1552
(b) MCO 1070/12K (IRAM)
(c) MCO 1900.16 (MARCORSEPMAN)
(d) 18 U.S.C. §922) (g) (3) (Gun Control Act, Unlawful Acts)
(e) OPNAVINST 5350.4E
(f) ALNAV 74/20 (Prohibition on the Use of Hemp Products Updated)
(g) Navy Code 20 Sidebar of Jun 22
(h) 21 U.S.C. §802 (Controlled Substances Act)

Encl: (1) DD Form 149 w/enclosures
(2) Non-judicial Punishment (NJP)/Unit Punishment Book (UPB) of 28 Jun 22
(3) Administrative Remarks (Page 11) entry of 28 Jun 22
(4) Administrative Remarks (Page 11) non-rec promotion entry of 28 Jun 22
(5) Administrative Remarks (Page 11) firearms restriction entry of 28 Jun 22
(6) Administrative Remarks (Page 11) processing entry of 28 Jun 22
(7) CO, ██████████, memo 5800 S-1 of 9 Jan 23
(8) Administrative Remarks (Page 11) 6105 counseling entry of 9 Jan 23
(9) AO HQMC memo 1070 JPL of 17 Feb 23

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 his unit punishment book/nonjudicial punishment (UPB/NJP) dated 28 June 2022, Administrative Remarks (Page 11) entry for wrongful use of a controlled substance, Page 11 non-recommended for promotion entry, Page 11 firearms restriction entry, and Page 11 processing entry, all dated 28 June 22, and a Page 11 6105 counseling entry, dated 9 January 2023, from his official military personnel file (OMPF).

2. The Board, consisting of ██████████ reviewed Petitioner's allegations of error and injustice on 18 April 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:

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[REDACTED]

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 28 June 2022, Petitioner received NJP for violation of Article 112a of the Uniform Code of Military Justice (UCMJ) for wrongful use of a controlled substance, specifically, THC-8. Petitioner was also issued four (4) Page 11 entries as a result of his wrongful use of a controlled substance and subsequent NJP, in accordance with references (b) - (d). Enclosures (2) - (6).

c. On 9 January 2023, the commanding officer (CO) who administered the NJP set aside the NJP as he determined the charge of Article 112a, UCMJ and subsequent NJP were not authorized. The CO requested that the NJP and drug urinalysis results be removed from Petitioner's official record to correct the legal error in charging the Petitioner with the incorrect offense. The CO subsequently issued the Petitioner a Page 11 6105 counseling entry for violation of Art. 92, UCMJ for failure to obey an order or regulation, specifically, OPNAVINST 5350.4E, by wrongfully using THC-8. Petitioner acknowledged and signed the entry and chose not to submit a rebuttal. Enclosures (7) and (8).

d. Petitioner contends that, in accordance with reference (g), THC-8 is not illegal under the Controlled Substances Act, reference (h), as a positive THC-8 urinalysis result, without additional evidence, is not evidence of a violation and should not be charged as a violation of Article 112a, UCMJ. Petitioner further contends that in accordance with reference (g), disciplining a member for violating Art. 112a, UCMJ, based on a positive THC-8 result is an error that warrants correction no matter the forum involved.

e. Enclosure (9), the advisory opinion (AO), provided by Headquarters, Marine Corps, Military Personnel Law Branch (JPL), recommended the Petitioner's request be granted in part. Specifically, that the NJP be removed based on the erroneous charge and the four (4) Page 11 entries be removed as they refer to the NJP. The AO goes on to state that although the Page 11 counseling entry dated 9 January 2023 is erroneous as reference (e) only applies to Marine Corps personnel attached to Navy commands, the error is a harmless scrivener's error. JPL determined that reference (f) applies to Marine Corps personnel, the elements of unlawful use of hemp products under this message are identical to reference (e), and Petitioner suffered no material harm from the error.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board concurred with the AO, in part, and finds the existence of an error and injustice warranting partial relief. In this regard, the Board determined that, based on the guidance in references (d) - (h) and the CO's action to set aside the NJP, there should be no documentation referencing the NJP in Petitioner's official record. As such, the Board concluded that the NJP, and subsequent Page 11 entries that reference the NJP, shall be removed from Petitioner's OMPF.

With regards to enclosure (8), the Board determined that although the AO determined the use of reference (e) to be a harmless scrivener's error, correcting the Petitioner's record to reflect the

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correct regulation would be appropriate. As such, the Board concluded that the counseling entry should be modified by replacing reference (e) with reference (f).

RECOMMENDATION

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

Petitioner's naval record be corrected by removing enclosure (2), his 28 June 2022 UPB/NJP, enclosure (3), his Page 11 entry for wrongful use of a controlled substance, enclosure (4), his Page 11 promotion restriction entry, enclosure (5), his Page 11 firearms restriction entry, and enclosure 6), his Page 11 processing entry.

Petitioner's naval record be corrected by modifying enclosure (8), his Page 11 6105 counseling entry dated 9 January 2023, by removing "OPNAVINST 5350.4E" and replacing it with "ALNAV 74/20."

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.

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.

5/5/2023

[REDACTED]