



**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. 1467-23  
Ref: Signature Date



Dear █

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 7 March 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 the 16 June 2022 Administrative Remarks 6105 (page 11) entry. The Board considered that your administrative separation (ADSEP) board determined that you did not wrongfully use a controlled substance and retained you in the Marine Corps. You contend that there is no evidence that the positive urinalysis prejudiced the good order and discipline of the command or was of a nature to bring discredit to the armed service. You also contend that the page 11 entry is inaccurate and unjust since wrongful use cannot be determined simply by a positive urinalysis. You argue that a positive urinalysis by itself does not indicate whether the substance was knowingly or accidentally ingested, or whether the service member had a lawful reason to ingest the substance. You further contend that the alleged misconduct was disproven and is otherwise not supported by the evidence, and the page 11 entry fails to comply with basic legal requirements because it does not include specific recommendations for corrective action. You claim that you were not counseled by the commanding officer (CO).

The Board determined that your page 11 entry is valid. In this regard, the Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a 6105 entry counseling you for violating Uniform Code of Military Justice (UCMJ) Article 112a for wrongfully using a controlled substance, as evidence by your positive urinalysis test for Temazepam. The Board also noted that you acknowledged the entry and elected not to submit a statement. The Board also determined that the contested entry was written and issued according to the MARCORSEPMAN. Specifically, the entry provided written notification concerning your deficiencies, specific recommendations for corrective action, where to seek assistance, the consequences for failure to take corrective action, and it afforded you the opportunity to submit a rebuttal. Moreover, according to the Marine Corps Individual Records Administration Manual, your CO was required signed the entry and to record all confirmed incidents of illegal drug involvement.

The Board noted that your ADSEP Board unanimously found that the preponderance of evidence did not prove any of the acts or omission alleged in the notification and recommended your retention. The Board, however, determined that the ADSEP board is a separate processes with the fundamental purpose of determining your suitability to serve on the basis of conduct and ability to meet and maintain the required standards of performance. The Board also determined that, according to the *Manual for Courts-Martial* (2019 ed.), standing alone, a positive urinalysis may be legally sufficient to sustain a conviction for wrongful use of a controlled substance. The Board further 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 authority to issue a page 11 entry. Therefore, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

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,

3/25/2023

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Executive Director

Signed by: █