



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. 2326-23
Ref: Signature Date

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Dear Petitioner:

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 28 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 unit punishment book/non-judicial punishment (UPB/NJP). The Board considered your contention that there is no reason you should have received NJP and been reduced in grade. You claim that your administrative separation (ADSEP) board retained you in the Marine Corps and found no basis for the alleged offense.

The Board noted that you received NJP for violating Article 112a, Uniform Code of Military Justice (UCMJ) for the wrongful use of a controlled substance. The Board also noted that you acknowledged your Article 31, UCMJ Rights, accepted NJP, certified that you were given the opportunity to consult with a military lawyer, acknowledged your right to appeal, and you elected not to appeal your commanding officer's (CO's) finding of guilt at NJP. The Board determined that your positive urinalysis test constituted sufficient evidence that you violated Article 112a, UCMJ. The Board also determined that your CO had sufficient evidence, acted within his discretionary authority, and conducted your NJP pursuant to the *Manual for Courts-Martial* (2019 ed.).

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 from NJP with the fundamental purpose of determining your suitability to serve on the basis of your conduct and ability to meet and maintain the required standards of performance. The Board also determined that, according to the MCM, 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 NJP. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the NJP. 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,

4/11/2023

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Executive Director
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