



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

██████████
Docket No. 2629-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████ ██████████
XXX XX ██████████ USMC

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

Encl: (1) DD Form 149 w/enclosures
(2) Administrative Remarks (Page 11) 6105 counseling entry of 4 Aug 22
(3) Administrative Remarks (Page 11) firearms restriction entry of 4 Aug 22
(4) Administrative Remarks (Page 11) non-rec promotion entry of 4 Aug 22

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 multiple copies of his Administrative Remarks (Page 11) firearms restriction entry, dated 4 August 2022, from his official military personnel file (OMPF).

2. The Board, consisting of ██████████, ██████████, and ██████████, 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:

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 4 August 2022, Petitioner was issued enclosure (2) for violation of Article 92, of the Uniform Code of Military Justice for failure to obey an order or regulation, specifically, ALNAV 74/20 by wrongfully using THC-8. Petitioner was also issued enclosure (3), per reference (b), based on his positive urinalysis for a "controlled substance." Petitioner acknowledged and signed both entries, and although he chose to submit rebuttals, he failed to do so.

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c. On 15 August 2022, Petitioner was issued enclosure (4), non-recommending him for promotion for 18 months. Petitioner acknowledged and signed both entries, and chose not to submit a rebuttal.

d. Petitioner contends that, in accordance with reference (c), THC-8 is not illegal under the Controlled Substances Act, reference (d), as a positive THC-8 urinalysis result, without additional evidence, is not evidence of a violation. Petitioner further contends that in accordance with reference (c), 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.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an error and injustice warranting relief. In this regard, the Board determined that based on the guidance in reference (c), the use of THC-8 is not a "controlled substance" under reference (d). Therefore, issuing him a Page 11 entry restricting the use and/or possession of firearms based on a violation of reference (d) is not authorized. As such, the Board concluded that enclosure (3) shall be removed from Petitioner's OMPF. The Board concluded enclosures (2) and (4) are valid entries.

RECOMMENDATION

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

Petitioner's naval record be corrected by removing enclosure (3), his 4 August 2022 Page 11 entry regarding firearm restrictions, and all multiple copies.

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.

5/8/2023

[REDACTED]
Executive Director

Signed by: [REDACTED]