



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

█
Docket No. 8430-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █
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Ref: (a) Title 10 U.S.C. § 1552
(b) MCO 1900.16 (MARCORSEPMAN)

Encl: (1) DD Form 149 w/enclosures
(2) NAVMC 118(11) 6105 and Page 11 counseling entries, 28 Jun 22
(3) Petitioner's Rebuttal Statement, 1 Jul 22
(4) Senior Member, Administrative Discharge Board, 25 Oct 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 the 28 June 2022 6105 and Page 11 counseling entries.

2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 7 November 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, found that, before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board made the following findings:

a. On 28 June 2022, Petitioner was issued a 6105 counseling entry that pursuant to reference (b), he was being processed for administrative separation for testing positive and for the "wrongful use of THC a scheduled I controlled substance at 38 nanograms." Petitioner signed the counseling entry and chose to make a statement. In his rebuttal statement, Petitioner stated that he "never knowingly used THC" but was later informed by a friend that THC was mixed into some of the snacks at a party he attended. On 28 June 2022, Petitioner was also issued a Page 11 counseling entry notifying him that he is eligible but not recommended for promotion to corporal due to pending administrative separation. Enclosures (2) and (3).

b. On 25 October 2023, Petitioner's Administrative Discharge Board unanimously found that the preponderance of the evidence did not prove any of the acts or omissions alleged in the notification and recommended Petitioner's retention in the Marine Corps. Enclosure (4).

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c. In his application, Petitioner contends that it was proven that his drug use was unintentional, he did not receive non-judicial punishment, and the Administrative Discharge Board found him fit for retention in the military. Petitioner claimed that the incident occurred more than a year ago and it is preventing him from reenlisting. Enclosure (1).

CONCLUSION

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

In this regard, the Board noted that enclosure (2) was properly issued due to Petitioner's positive urine test and Petitioner was properly processed for administrative separation pursuant to reference (b). The Board also noted the Administrative Discharge Board's finding and that Petitioner was retained on active duty. The Board carefully considered Petitioner's statement that his drug use was unintentional, as supported by a witness during his Administrative Discharge Board. Ultimately, the Board found Petitioner's statement regarding innocent ingestion convincing when coupled with the Administrative Discharge Board's decision and determined that the counseling entries should be removed.

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 6105 and Page 11 counseling entries, and enclosure (3), his 1 July 2022 rebuttal statement.

Any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record, and 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.

11/15/2023

[REDACTED]