



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

█  
Docket No. 9392-23  
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 22 February 2024. 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, as well as the 13 January 2024 Advisory Opinion (AO) provided by Headquarters Marine Corps (JPL). The AO was provided to you on 18 January 2024, and you were given 30 days in which to submit a response. Although you appear to have read the email on 22 January 2024 as indicated by the “read receipt,” you declined to avail yourself of the opportunity to submit a rebuttal.

The Board carefully considered your request to remove the nonjudicial punishment (NJP) imposed for violation of Article 112a of the Uniform Code of Military Justice and restore your rank and previous entitlements. You contend you never tested positive for a “federally illegal substance” because THC-8 is not illegal under the Controlled Substances Act (CSA); it is listed in ALNAV 047/20 as a prohibited substance. You further contend that a positive THC-8 urinalysis result, without additional evidence, is not evidence of a violation of the CSA and should not be charged as a violation of Article 112a nor should it trigger mandatory separation processing.

The Board, however, substantially concurred with the AO and concluded your record should remain unchanged. The Board noted nothing in your submission, other than your personal statement, indicates the Article 112a guilty finding at NJP was for using Delta-8 THC. Further, the results of the Administrative Discharge Board (ADB) proceeding, the only evidence you

provided, did not demonstrate that the ADB's decision was based on the fact you used Delta-8 THC. Lastly, the Board substantially concurred with the AO and determined you offered no evidence to show that the Commanding Officer's conclusion that you violated Article 112a was implausible, failed to consider important aspects, or ran counter to the evidence. Based on the available evidence, the Board concluded there is insufficient evidence of an error or injustice warranting removal of the NJP or any associated relief. 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,

3/11/2024



Executive Director

Signed by:

