



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

██████████
Docket No. 10336-23
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) MCO 1070.12K w/CH 2
(c) MCO 1900.16F w/CH 2

Encl: (1) DD Form 149 w/attachments
(2) NAVMC 118(11) Administrative Remarks (6105) counseling entry, 15 Mar 23
(3) NAVMC 118(11) Administrative Remarks (Page 11) Promotion Restriction entry,
15 Mar 23
(4) Petitioner's Statement to enclosure (2), undated
(5) Senior Member ltr 1910 ADSEP, Subj: Administrative Discharge Board Report,
25 Aug 23

1. Pursuant to the provisions of the reference, Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting to remove enclosures (2) and (4).

2. The Board, consisting of ██████████, ██████████, and ██████████ reviewed Petitioner's allegations of error and injustice on 21 December 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 Petitioner's 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 24 October 2022, during a random command urinalysis, Petitioner provided a urine sample that tested positive for Tetrahydrocannabinol-8 (THC8). Enclosures (2) and (4).

b. On 15 March 2023, pursuant to reference (b) and paragraph 6105 of reference (c), Petitioner was issued a 6105 entry counseling him for testing positive for THC8 for 24 ng/ml according to the report generated on 7 November 2022, batch number 0005, Epee 002, and form

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number 1089427CT. The entry also advised Petitioner of his understanding that he is being processed “for the following judicial or adverse administrative action: administrative separation.” On the same date, Petitioner was notified that he is eligible, but not recommended for promotion to the next higher grade and was placed on promotion restriction for 18 months. Petitioner acknowledged both entries and in his statement, Petitioner indicated, “As testing began, I grew concerned because I was informed that my label had been placed on another Marines sample. This information was later verified through the UPC. It is my understanding that my label was placed on another Marine's urine sample by mistake. I am not aware of whether the misstep was appropriately rectified, and I am concerned that the results of any testing may have been affected by this error. I did not witness what happened with that sample or my label. I believe that this misstep may have led to the sample submitted under my name/EDIPI testing positive for 25ng of THC-8. Enclosures (2), (3) and (4).

c. On 25 August 2023, Petitioner’s administration separation (ADSEP) board unanimously found that the preponderance of evidence did not prove the basis for separation and recommended his retention in the Marine Corps. The ADSEP board transcript noted, in part, that a lance corporal had used the wrong label; the bottle was properly disposed of and destroyed, the process being explained in front of everyone. Petitioner still had a hold of his bottle the entire time, nothing was forged, no one left the building, and no one was called into the building that was not there already during the incident. In Petitioner’s testimony, noted that from the time that he closed the lid on his sample, he maintained control from the initial bottle filling, to the labeling, and placing it in the box. There were three or four others there that day. He does not know their names; he had control of his bottle the entire time that [REDACTED] was figuring out the label mishap. Enclosure (5).

d. In his application, Petitioner contends that an administrative discharge board convened to hear allegations and found there to be no basis. Petitioner claims the command uploaded the counseling entries and rebuttal after the board’s decision. Enclosure (1).

CONCLUSION

Upon careful review and consideration of all the evidence of record, the Board found the existence of an error warranting partial corrective action.

The Board that determined that Petitioner’s counseling entry for testing positive for THC is valid. In this regard, the Board noted that reference (b) directs Commanders to record in the service record book, all confirmed incidents (civil or military) of illegal drug involvement. The Board also noted that reference (c) directs Commanders to process Marines for ADSEP for the illegal, wrongful, or improper use, possession, sale, transfer, distribution, of any controlled substance. The Board determined that Petitioner’s positive urine sample was sufficient evidence for the CO to issue the contested counseling entry and to process Petitioner for ADSEP. The Board also determined that Petitioner’s reliance upon the results of the ADSEP board are misguided. An ADSEP board is administrative in nature and convened with the fundamental purpose of determining a member’s suitability to serve based on conduct and ability to meet and maintain the required standards of performance. An ADSEP board is not convened to overturn previous administrative or punitive action based on sufficient evidence. In addition, according to

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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 the ADSEP board findings alone are insufficient to invalidate Petitioner's counseling entries issued based upon a positive urinalysis test result. In addition, the ADSEP board's findings are not binding on a commanding officer's discretionary authority to issue a counseling entry. In consideration of the totality of the evidence, the Board found Petitioner's evidence insufficient to determine there was an error or irregularity regarding the submission and testing of his urine sample.

Concerning the ADSEP board's recommendation to retain Petitioner in the Marine Corps. The Board noted that reference (b) prohibits the mention of administrative discharge proceedings if it does not result in discharge. The Board thus, determined that Petitioner's counseling entries warrant modification by redacting statements regarding administrative separation.

RECOMMENDATION

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

Petitioner's naval record be corrected by modifying, enclosure (2), the 15 March 2023 counseling entry issued for the wrongful use of THC by removing or redacting the statement:

"I understand that I am being processed for the following judicial or adverse administrative action: administrative separation."

Petitioner's naval record be corrected by modifying, enclosure (3), the 15 March 2023 Page 11 entry notifying Petitioner that he is not recommended for promotion by removing the statement:

"Due to my recent processing of administration separation"

That no further changes be made to Petitioner's naval record.

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 Regulations, 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.

12/29/2023

