



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

█
Docket No. 764-24
Ref: Signature Date

█
█
█
Dear █

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 6 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 applications, together with all material submitted in support thereof, relevant portions of your naval record and applicable statutes, regulations, and policies.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully considered your request to remove your 23 November 2022 Administrative Remarks 6105 (page 11) counseling entry. The Board considered your contention that the administrative separation (ADSEP) board recommended that you be retained because you did not violate Article 92 or 112a of the Uniform Code of Military Justice (UCMJ). You also assert that because the convening authority approved your retention, it makes the counseling entry invalid. Finally, the Board also considered your contention that pursuant to ALNAV 074/20, the use of THC-8 does not constitute a violation of Article 112a, therefore making the article referenced incorrect.

The Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a 6105 entry for violation of Article 112a, wrongful use, possession, etc., of a controlled substance. Specifically, the counseling entry

indicates that on or about 5 November 2022, you tested positive for THC during a battalion urinalysis. The Board also noted that you signed the counseling entry and elected not to submit a statement. The Board determined that the contested counseling entry was written and issued according to the MARCORSEPMAN. Specifically, the counseling entry provided written notification concerning your deficiencies, specific recommendations for corrective action, where to seek assistance, the consequences for failure to take corrective action, and it afforded you the opportunity to submit a rebuttal. Further, your commanding officer (CO) signed the counseling entry, and he/she determined that your substandard performance/misconduct was a matter essential to record, as it was his/her right to do.

In regards to your contention that pursuant to ALNAV 074/20, the use of THC-8 does not constitute a violation of Article 112a, the Board noted that, while your contention may have some merit, it does not invalidate the counseling entry. In this regard, the Board noted ALNAV 074/20 is a lawful general order prohibiting sailors and Marines from using any product made or derived from hemp. Therefore, the Board determined that, although the commanding officer referenced the incorrect Article in the counseling entry, because counseling entries are not required to include UCMJ violations, the mentioning of Article 112a, UCMJ is not material error and does not affect the basis for adversity. Moreover, the Board determined you provided insufficient evidence to prove that you did not test positive from using any product made or derived from hemp. Thus, the Board determined that the CO relied upon sufficient evidence and acted within his/her discretionary authority when deciding that your counseling entry was warranted.

In regards to your contention that the Administrative Separation Board (ADSEP) proved your drug use was unintentional, the Board noted that pursuant to the MARCORSEPMAN, Commanders are responsible for processing all Marines for ADSEP by reason of misconduct for drug abuse. Further, the Board noted the purpose of an ADSEP board is to determine your suitability to serve on the basis of your conduct and your ability to meet and maintain the required standards of performance and does not prove one's guilt or innocence. Therefore, the Board determined that the ADSEP board's findings do not invalidate the counseling entry.

Moreover, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. The Board found your evidence insufficient to overcome this presumption. The Board thus concluded that there is no probable material error, substantive inaccuracy, or injustice warranting removal of the counseling entry. 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,

