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UNITED STATES AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE MATTER OF:

DOCKET NUMBER: BC-2024-01799

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COUNSEL: NONE

HEARING REQUESTED: YES

APPLICANT'S REQUEST

1. His nonjudicial punishment (NJP) under Article 15, *Record of Nonjudicial Punishment Proceedings*, of the Uniform Code of Military Justice (UCMJ), imposed on 23 October 2023, and Unfavorable Information File (UIF), be declared void and removed from his official military records.
2. His AF Form 716, *Enlisted Performance Brief (EPB) (E3-E6)*, rendered for the reporting period 1 February 2023 thru 31 January 2024 be removed and expunged from his official military records.

APPLICANT'S CONTENTIONS

He received NJP action for violating Article 92, *Failure to Obey an Order or Regulation*, UCMJ, based on the alleged wrongful use of Delta-8 tetrahydrocannabinol (THC). However, Department of the Air Force Manual (DAFMAN) 44-197, *Military Drug Demand Reduction Program*, explicitly excludes use from being considered a violation when an individual lacked reasonable knowledge that a substance consumed was derived from hemp, including cannabidiol (CBD). Despite his counsel presenting substantiated evidence to an administrative discharge board demonstrating his innocence and unknowing ingestion of Delta-8 THC through a homemade food product, the NJP action was upheld. The administrative discharge board's brief deliberation, lasting less than 15 minutes, resulted in a finding that he did not wrongfully use Delta-8 THC. Consequently, the decision to maintain his NJP action, referral EPB, and UIF is unjust and contradicts DAFMAN 44-197.

The applicant's complete submission is at Exhibit A.

STATEMENT OF FACTS

The applicant is a currently serving Air Force staff sergeant (E-5).

On 13 September 2023, according to a Report of Investigation (ROI), the Drug Demand Reduction Program (DDRP) notified the Security Forces Squadron (SFS) Criminal Investigations that the applicant tested positive for Delta-8 THC through his submission of a random urine sample, collected on 29 August 2023. The applicant was apprehended and indexed for violating Article 112a, *Wrongful Use of a Controlled Substance*, UCMJ. The applicant was subsequently released to his first sergeant and placed under investigation.

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On 4 October 2023, according to the ROI, the SFS Criminal Investigations was notified of the negative results from the DDRP regarding the applicant's Bickle Test conducted on 14 September 2023.

On 11 October 2023, the applicant's section commander offered him NJP, under Article 15, UCMJ.

On 16 October 2023, after consulting with an attorney, the applicant waived his right to court-martial, accepted the NJP proceedings, attached a written presentation, and did not request a personal appearance before his section commander.

On 23 October 2023, the applicant's section commander found he committed the alleged offense, and he received NJP under Article 15, UCMJ. He received forfeitures of \$1,000.00 pay per month for two months, reduction to the grade of senior airman, suspended through 18 April 2024, after which time it will be remitted without further action, unless sooner vacated, and a reprimand.

On 31 October 2023, the applicant elected to appeal his NJP action by submitting matters in writing.

On 1 November 2023, after considering all the matters presented, the section commander denied his appeal and determined the NJP action would be filed in his UIF.

On 13 November 2023, after considering all the matters presented in the applicant's appeal, the appellate authority further denied his appeal.

On 16 November 2023, the applicant acknowledged the actions taken on his appeal and of the decision to file the action in a UIF. The Staff Judge Advocate (SJA) legal review found the record to be legally sufficient.

On 1 December 2023, the General Court-Martial Convening Authority SJA Administrative Supervisory Review found the record to comply with Air Force Instruction (AFI) 51-202, *Nonjudicial Punishment*, and Part V, Manual for Courts-Martial (MCM), *Nonjudicial Punishment*.

On 21 February 2024, the applicant was rendered a referral EPB. Specifically, the *Rater Assessment* section indicated the applicant received an Article 15 for the failure of a urinalysis test. The applicant acknowledged receipt of the EPB and submitted a written rebuttal.

On 29 February 2024, the applicant's EPB higher-level reviewer assessment indicates the applicant's comments were carefully considered and the reviewer concurred with the assessment of the referral report.

On 20 March 2024, according to documentation provided by the applicant, majority of the voting members of the applicant's administrative discharge board found he did not wrongfully use Delta-8-THC, in violation of Article 92, UCMJ. The finding in the allegation did not form a basis for discharge under Department of the Air Force Instruction (DAFI) 36-3211, *Military Separations*, and he should be retained in the United States Air Force.

On 21 March 2024, according to documentation provided by the applicant, his counsel requested that the NJP be set aside by his section commander.

On 27 March 2024, according to documentation provided by the applicant, his section commander decided against setting aside the NJP actions. Specifically, the board's recommendation that the applicant be retained does not alter her decision to hold the applicant accountable for having a positive urinalysis specimen.

On 29 March 2024, according to documentation provided by the applicant, through counsel, a request was made to the applicant's commander to set aside his NJP action based on the findings by the administrative discharge board and due to the denial from his section commander to set aside his NJP action. The crux of the applicant's case came down to the fact of whether he wrongfully (i.e. knowingly and intentionally) used Delta-8 THC.

On 11 April 2024, according to documentation provided by the applicant, his commander decided against setting aside the NJP actions. Specifically, the board's retention determination and additional evidence did not alter the decision to hold the applicant accountable for having a positive urinalysis specimen.

For more information, see the excerpt of the applicant's record at Exhibit B and the advisory at Exhibit C.

AIR FORCE EVALUATION

AF/JAJI recommends denying the application. There is insufficient evidence to demonstrate a legal error or injustice. Based on the preponderance of the evidence, a rational factfinder could conclude the alleged misconduct more likely than not occurred. Furthermore, in accordance with Department of the Air Force Instruction (DAFI) 51-202, *Nonjudicial Punishment*, every reasonable inference supports the factual determinations and actions taken. All procedural and due process requirements were met. While opinions may differ regarding the administrative discharge board's findings and recommendations, there is no requirement to remove the NJP from a member's record following a contrary finding by such a board. The UIF and referral EPB were appropriate follow-on actions.

The complete advisory opinion is at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION

The Board sent a copy of the advisory opinion to the applicant on 15 October 2024 for comment (Exhibit D) but has received no response.

FINDINGS AND CONCLUSION

1. The application was timely filed.
2. The applicant exhausted all available non-judicial relief before applying to the Board.
3. After reviewing all Exhibits, the Board concludes the applicant is not the victim of an error or injustice. The Board concurs with the rationale and recommendation of AF/JAJI and finds a preponderance of the evidence does not substantiate the applicant's contentions. The Board finds the administrative discharge board's recommendation for retention separate from the administration of the NJP, which was in accordance with DAFI 51-202. Based on the evidence, it appears all procedural actions in the administration of the NJP were in accordance with regulations and the applicant was provided his due process rights. Accordingly, the Board finds insufficient

evidence to warrant removal of the Article 15, UIF and the referral EPB. Therefore, the Board recommends against correcting the applicant's records.

4. The applicant has not shown a personal appearance, with or without counsel, would materially add to the Board's understanding of the issues involved.

RECOMMENDATION

The Board recommends informing the applicant the evidence did not demonstrate material error or injustice, and the Board will reconsider the application only upon receipt of relevant evidence not already presented.

CERTIFICATION

The following quorum of the Board, as defined in Department of the Air Force Instruction (DAFI) 36-2603, *Air Force Board for Correction of Military Records (AFBCMR)*, paragraph 2.1, considered Docket Number BC-2024-01799 in Executive Session on 26 June 2025:

Work-Product, Panel Chair
Work-Product, Panel Member
Work-Product, Panel Member

All members voted against correcting the record. The panel considered the following:

- Exhibit A: Application, DD Form 149, w/atchs, dated 15 May 2024.
- Exhibit B: Documentary evidence, including relevant excerpts from official records.
- Exhibit C: Advisory Opinion, AF/JAJI, dated 7 October 2024.
- Exhibit D: Notification of Advisory, SAF/MRBC to Applicant, dated 15 October 2024.
- Exhibit E: Report of Investigation – WITHDRAWN.

Taken together with all Exhibits, this document constitutes the true and complete Record of Proceedings, as required by DAFI 36-2603, paragraph 4.12.9.

8/13/2025

X

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Board Operations Manager, AFBCMR
Signed by: USAF

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