

DEPARTMENT, OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS 2 NAVY ANNEX WASHINGTON DC 20370-5100

CRS Docket No: 8356-00 17 July 2001

Dear 🗺

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 27 June 2001. 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, your naval record and applicable statutes, regulations and policies. The Board also considered the advisory opinion, dated 9 May 2001, from the Navy Drug Testing Program Manager, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this regard, the Board substantially concurred with the comments set forth in the advisory opinion.

The Board found that you reenlisted in the Navy on 10 August 1994 after nearly nine years of prior active service. Your record reflects that you received nonjudicial punishment (NJP) on 31 August 1999 for use of marijuana, amphetamine, and methamphetamine. The punishment imposed consisted of forfeitures of \$1005 per month for two months, restriction and extra duty for 45 days, and a reduction to pay grade E-5 (OS2). Subsequently, an administrative discharge board (ADB) found that you had not committed misconduct, and you were retained in the Navy.

The Board noted your contentions concerning the imposition of NJP on 31 August 1999. Specifically, the Board noted that the ADB considered a letter from Dr. H stating that you had used a Vicks inhaler which would produce a false positive urinalysis for methamphetamine. You further submitted additional information concerning substances that would also cause false positives for marijuana and amphetamines. You implied that you had used some of these substances prior to the urinalysis.

The advisory opinion opined that second hand marijuana smoke or the use of a Vicks inhaler would not cause a false positive urinalysis. Further, the opinion found that the other listed medications provided in the statements by you and Dr. H would not, alone or in any combination, produce false positive results for methamphetamine, amphetamine or marijuana with the testing procedures utilized by the Navy Drug Screening Laboratories. The opinion recommended that your request be denied, and the Board concurred with this recommendation.

The Board also noted your performance of duties prior to and subsequent to the NJP, but found that it was insufficient to warrant the deletion of established misconduct from your record. In this regard, the Board concluded that such action would be unfair to your peers against whom you will compete for promotions and assignments. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously 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,

W. DEAN PFEIFFER Executive Director

Enclosure



DEPARTMENT OF THE NAVY NAVY ENVIRONMENTAL HEALTH CENTER 2510 WALMER AVENUE NORFOLK, VIRGINIA 23513-2617

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From: Navy Drug Testing Program Manager

To: Chairman, Board for Correction of Naval Records 2 Navy Annex, Washington, DC 20370-5100

Subj: COMMENTS AND RECOMMENDATION IN THE CASE OF

Ref: (a) BCNR ltr with file AEG:jdh Docket No: 8356-00 of 20 Apr 01 (b) the state of Analytical Toxicology, Vol. 11, (1987), p.89.

1. In response to reference (a), an explanation of the procedures at the Navy Drug Screening Laboratories is provided to refute the allegations of inaccuracies and the possibilities of false positive results in the subject case.

2. The second hand smoke of marijuana while in a car scenario provided by the service member to explain the positive tetrahydrocannabinol (THC) result (indicating recent marijuana ingestion) has been scientifically proven to be unrealistic. A scientific study published as reference (b) addressed whether an individual exposed to second hand smoke from marijuana cigarettes could in fact produce a positive urinalysis by testing procedures at that time. The key finding of this study was that the ventilation conditions of the room where the study occurred appeared to be extremely important. THC was monitored within the airtight room during the study where under extreme conditions, the smoke of 16 marijuana cigarettes was pumped into a room the size of a small bathroom. The seven volunteers were exposed for one hour to the smoke of 16 marijuana cigarettes for six consecutive days. Room air samples were withdrawn and tested for the THC content. The results of this study indicated that under these extreme conditions the volunteers did ingest enough second hand smoke to present as a positive THC urinalysis by gas chromatography/mass spectrometry (GC/MS) above the Department of Defense (DoD) cutoff after accumulation of THC for several days. The key component, which allowed the accumulation of THC, was the airtight conditions of the room such that the volunteers required eye goggles to tolerate the extreme amount of smoke in the room. Once the door of the room was open the THC air content dropped dramatically to less than 10% of when it was closed. In conclusion, it is highly improbable a service member would knowingly expose himself to the extreme amount of second hand smoke from multiple (4-16) marijuana cigarettes for the length of time necessary (1-6 hr) to be above the DoD cutoff limits for the screening immunoassay of 50 ng/mL THC metabolites and above the DoD cutoff for the confirmation GC/MS analysis of 15 ng/mL. The subject service member tested at 18 ng/mL by GC/MS, consistent with THC ingestion within the last 1-3 days for an infrequent user.

3. The use of Vicks inhaler which contains l-methamphetamine (l-desoxyephedrine) will not result in a positive methamphetamine test result by the DoD testing requirements

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because a second confirmation test is performed to determine the % d- and % lmethamphetamine isomers. The d-methamphetamine isomer is the psychoactive stimulant that is readily abused whereas the l-methamphetamine is used to relieve nasal congestion through its vasoconstrictor properties with little stimulatory effects. In the subject case the Navy Drug Screening Laboratory performed the chiral test for methamphetamine isomers with the result of 95% d-methamphetamine. This is inconsistent with the use of the Vicks inhaler which would produce only the lmethamphetamine isomer.

4. The other listed medications provided in the statements by the service member and Dr. Holtorf, including the Additional Amplifying Information, would not alone or in any combination produce false positive results for methamphetamine, amphetamine or THC with the testing procedures utilized by the Navy Drug Screening Laboratories. I support the actions by Commanding Officer, U.S.S. John A. Moore at non-judicial punishment based on the test results performed at Navy Drug Screening Laboratory, San Diego. My recommendation is to deny the appeal by Commanding Officer.

5. If there is further information required please do not hesitate to contact me at (757) 462-5405, DSN: 253-5405 or by email mcwhorterl@nehc.med.navy.mil.

CDR, MSC, USN