



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

[REDACTED]  
Docket No: 04310-16

MAR 03 2017

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW NAVAL RECORD OF [REDACTED] USN,  
[REDACTED]

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachment  
(2) Evaluation Report and Counseling Record ending 15 Aug 15  
(3) Administrative Board Findings/Recommendations sheet

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted Sailor in the Navy filed enclosure (1), with this Board requesting the removal of her nonjudicial punishment (NJP) held on 20 August 2015, for violating Uniform Code of Military Justice Article 112a (wrongful use of a controlled substance), based on the findings of her Administrative Discharge Board (ADB) proceeding.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 21 November 2016, and determined that the partial corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, 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 finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Petitioner filed her first petition to the Board in compliance with the timeliness requirements of reference (a).

c. Petitioner enlisted in the Navy and began a period of active duty on 10 March 2014. On 20 August 2015, while serving onboard the [REDACTED] she received NJP for wrongful use of a controlled substance (Diazepam). She was awarded 60 days restriction, a reduction in paygrade, and a forfeiture of pay. Subsequently, administrative discharge action was initiated to separate her by reason of misconduct due to drug abuse. Petitioner elected to consult counsel and have her case heard before an ADB.

d. On 10 February 2016, during the administrative separation board proceedings, Petitioner introduced evidence that she was vigilant about her weight in order to maintain compliance with the Navy's Body Composition Assessment guidance. She provided evidence that she exercised voluntarily with the Fitness Enhancement Program, paid for supplements, and frequented an established gym. She purchased what she believed to be a legal weight loss pill from the establishment, paid with a credit card, and subsequently tested positive for the controlled substance Diazepam. The ADB found by a unanimous vote of 3 to 0, that preponderance of evidence did not support the basis that Petitioner had committed misconduct by wrongful using a controlled substance. Petitioner is currently still serving on active duty in the Navy.

e. Petitioner's evaluation report covering the period from 16 July to 15 August 2015 reflects her 15 August 2015 NJP guilty finding. The NJP is not reflected elsewhere in Petitioner's service record.

f. The Board considered Petitioner's request for removal of the NJP findings from her evaluation report on the basis of the ADB's unanimous determination that she did not knowingly ingest a controlled substance.

g. The Board also carefully reviewed Petitioner's service record and application to the Board, and concluded, by a vote of 2 to 1, that Petitioner should be granted relief by removing her evaluation report ending 15 August 2015.

h. The Board, by majority vote, recommends removing the evaluation report ending on 15 August 2015 because its sole comment in Block 43 relates to the NJP. The Board noted that Petitioner was found guilty of wrongful use of a controlled substance at NJP, but when she presented a defense to the positive urinalysis at her ADB, the board unanimously found no misconduct. The Board also noted that with the exception of the reference to the NJP proceedings in Petitioner's evaluation for the period ending on 15 August 2015, Petitioner's record did not indicate an NJP or other adverse or punitive action relating to wrongful use of a controlled substance.

#### MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, a majority of the Board, [REDACTED] concludes that Petitioner's request warrants favorable action on the basis of injustice.

The majority reviewed the ADB's determination and concluded that the ADB had the benefit of reviewing the entirety of the evidence, including Petitioner's defense, and made a unanimous determination that Petitioner did not wrongfully ingest a controlled substance because she lacked the knowledge that she was doing so. The Board concluded that since the ADB found that Petitioner had not committed the misconduct of wrongful use, the language from Block 43 should be removed in its entirety from her evaluation ending 15 August 2015. Since Block 43 only contains information relating to the NJP, the majority determined that the entire report should be removed from Petitioner's record as a matter of justice.

In view of the foregoing, the majority finds the existence of an injustice warranting the following corrective action.

MAJORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing her evaluation report covering the period from 16 July to August 2015.

b. That there be inserted in Petitioner's naval record a memorandum in place of the removed report, containing appropriate identifying data concerning the report; that such memorandum state that the report has been removed by order of the Secretary of the Navy in accordance with the provisions of federal law and may not be made available to selection boards and other reviewing authorities; and that such boards may not conjecture or draw any influences as to the nature of the report.

MINORITY DETERMINATION:

The minority, [REDACTED] disagrees with the majority's favorable recommendation and concludes that Petitioner's request does not warrant corrective relief.

The minority member considered that Petitioner purchased and ingested a pill for weight loss and as a result, had a positive urinalysis for the wrongful use of Diazepam, a controlled substance. The minority considered the findings of the ADB, but determined that the NJP findings were independent of those of the ADB, and therefore should remain in Petitioner's record.

In view of the above, the minority finds no error or injustice warranting corrective action.

MINORITY RECOMMENDATION:

a. That Petitioner's request be denied.

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.

[REDACTED]  
Recorder

[REDACTED]  
Docket No: 04310-16

5. The foregoing action of the Board is submitted for your review and action.

[REDACTED]  
Executive Director

*MAJORITY RECOMMENDATION.*  
Reviewed and Approved / ~~Disapproved~~ [REDACTED]

*3/15/17*