



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

█  
Docket No. 8962-23  
Ref: Signature Date

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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 5 March 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 application, together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies, as well as the 22 December 2023 advisory opinion (AO) furnished by the Marine Corps Military Personnel Law Branch (JPL). The AO was provided to you on 11 January 2024, and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

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 modify the 16 May 2023 Unit Punishment Book (UPB)/non-judicial punishment (NJP) by removing the charge for violating Article 112a (Wrongful Use of a Controlled Substance), Uniform Code of Military Justice (UCMJ). The Board considered your contention that your positive urinalysis for delta-9 Tetrahydrocannabinols (THC) was the result of a hemp product which is not a Schedule I substance; thus, the Article 112a, UCMJ guilty finding constitutes an error. You also contend that despite repeated testimony that you did not use a controlled substance, you were charged with violating Article 112a. You claim the charge is effecting your rights and liberties afforded under the Constitution. You also claim that false promises of a timely separation process and of no legal consequences

were contributing factors in your NJP, but turned out to be baseless. This injustice was not revealed until you were required to make a rebuttal to your third notice of separation and you are being ordered to surrender your firearms for use of a controlled substance, despite being sober for six months.

The Board, however, substantially concurred with the AO that your charge for violating Article 112a, UCMJ is valid. In this regard, the Board noted that you were found guilty of three specifications of Article 92, UCMJ, based on three positive delta-8 THC urinalysis results. You were also found guilty of a single specification of Article 112a, UCMJ, based on the positive delta-9 THC urinalysis result. The Board also noted that you acknowledged your Article 31, UCMJ Rights, accepted NJP, certified that you were given the opportunity to consult with a military lawyer, acknowledged your right to appeal, and elected not to appeal the Commanding Officer's (CO's) findings of guilt.

According to 21 USC section 812 both marijuana and THC are listed under Schedule I; specifically, "Tetrahydrocannabinols, except for tetrahydrocannabinols in hemp (as defined under section 1639o of title 7)." Per 7 USC section 1639o, "The term "hemp" means the plant *Cannabis sativa* L. and any part of that plant . . . with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis." Thus, products with a delta-9 THC level in excess of 0.3 percent are prohibited and classified as Schedule I substances. Accordingly, your use of hemp was a violation of Article 92, UCMJ and your use of a hemp product with a delta-9 THC level in excess of 0.3 percent was a violation of Article 112a, UCMJ. The Board determined that your NJP was conducted according to the *Manual for Courts-Martial* (2019 ed.). The Board also determined that your CO relied upon a preponderance of evidence, that included your positive urinalysis for delta-9 THC, when finding you guilty of violating Article 112a, UCMJ. Moreover, the Board relies on a presumption of regularity to support the official actions of public officers, in the absence of substantial evidence to the contrary, the Board will presume that they have properly discharged their official duties. The Board found your evidence insufficient to overcome this presumption.

Concerning your ability to possess firearms, 18 USC section 922(g) makes it unlawful for certain classes of individuals "to ship, transport, possess or receive any firearm or ammunition . . ." The statute identifies, "unlawful users or addicts of controlled substances" as a class of individuals that apply. Accordingly, the Board found no evidence that your rights and liberties afforded under the constitution were unlawfully affected.

You also indicate in your application that you experienced Traumatic Brain Injury (TBI), Other Mental Health, and Reprisal/Whistleblower. The Board found evidence of a head injury during boot camp but determined that the symptoms consistent with a mild TBI that have been resolved. The Board also found evidence of other mental health diagnoses. The Board noted the II Marine Expeditionary Force Psychiatrist's opinion that your mental health conditions minimally and indirectly contributed to your actions. The Board concurred with the Psychiatrist determination that your conditions did not disable you to the extent of impairing your judgement regarding the wrongfulness of your action or impair your volitional ability to conform your conduct to the requirement of the law. The Board thus concluded that there is no probable material error,

substantive inaccuracy, or injustice warranting modification of the UPB. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Concerning your indication of reprisal, the Board determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC section 1034. 10 USC 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy's follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with DoD policy you have the right to request review of the Secretary of the Navy's decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a de novo review and under 10 USC 1034(c) the Secretary of Defense cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Office of Legal Policy, 4000 Defense Pentagon, Washington, DC 20301-4000. Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and, a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the BCNR, therefore, please also include previously presented documentation that supports your statements.

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,

3/21/2024

