



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

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Docket No. 1673-24
Ref: Signature Date

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Dear Petitioner:

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 11 June 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, as well as the 29 April 2024 Advisory Opinion (AO) provided by the Headquarters, Marine Corps █. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would 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 1 November 2021 Unit Punishment Book (UPB), which documents your Non-Judicial Punishment (NJP). The Board considered your contention that you were the subject of an administrative separation (ADSEP) board and the ADSEP Board unanimously agreed the actions did not amount to an offense chargeable under the Uniform Code of Military Justice (UCMJ). You further contend that you did not understand what you were agreeing to when you signed the NJP and that the decision to accept NJP was influenced by the command. You also claim that you were told by the company gunnery sergeant it was an ongoing investigation, the evidence could not be provided to the legal office, and if you accepted NJP you would not be separated. Further, the Board considered the Defense Counsel statement, dated 8 November 2022, which you claim further supports removal of the

negative counseling from your official record. Additionally, you contend the counseling entry has not kept you from excelling as a Marine but has prevented potential promotions and awards. Finally, the Board noted you checked the "Other Mental Health" box on your application but chose not to respond to the Board's request for supporting evidence of your claim.

The Board noted you received NJP for Violation of Article 112a, wrongful use, possession, etc., of a controlled substance by knowingly introducing marijuana to Camp Pendleton and Article 131b, obstructing justice, in that you did impede due to the administration of justice, Uniform Code of Military Justice (UCMJ). Your Commanding Officer (CO) found you guilty and as punishment, reduced you to the rank of private first class (PFC/E-2), Forfeiture of \$1000 pay for two months (Total Forfeiture \$2000) and 45 days restriction and extra punitive duties to run concurrently without suspension. The Board also noted that you acknowledged your Article 31, UCMJ Rights, you accepted NJP, you did not submit written matters for consideration, and you did not appeal your CO's finding of guilt at NJP. The Board determined that your NJP was conducted according to the Manual for Courts-Martial (2019 ed.) and your CO acted within his discretionary authority to impose NJP. The Board also determined that when making the decision to impose NJP, the CO relied on a preponderance of evidence that substantiated the allegations of misconduct.

The Board, however, substantially concurred with the AO that your record should remain unchanged. In this regard, the AO noted that the ADSEP Board and NJP are separate and distinct processes serving different purposes and governed under separate and distinct authorities. Thus, the ADSEP Board's conclusion does not invalidate the CO's NJP determination just as the CO's determination was not binding on the ADSEP Board. The AO also noted that you presented no evidence, other than your statement, that you were improperly influenced by your command to accept NJP. Finally, the AO noted access to the full investigation is not necessary for consultation regarding the decision to accept NJP. Thus, the Board determined that the ADSEP board's findings do not invalidate the NJP and, other than your personal statement and assertions, you provided insufficient evidence that the NJP was improperly executed. The Board thus determined that your CO was well within his discretionary authority to impose NJP.

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. As a result, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting corrective action. 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,

6/27/2024

