



**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. 5465-24  
Ref: Signature Date

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Dear Petitioner:

This letter is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 27 August 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 24 June 2024 advisory opinion (AO) furnished by the Military Personnel Law Branch (JPL) and your response to the AO.

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 be reinstated into the Marine Corps to allow for retirement. The Board considered your contention that you have never used cocaine in your life and your claim that you presented overwhelming evidence during the administrative separation (ASB) board showing that you tested positive for cocaine due to drinking coca tea while on vacation in Colombia with your wife, who was pregnant at the time. Next, the Board considered your claims that the ASB findings were without legal or factual basis and should be disapproved. The Board also considered your claims that you passed a polygraph test, which you provided with your Letter of Deficiency (LOD), but that it was disregarded by your command. You further claim that the ASB hearing excluded testimony of the government's expert witness, a medical doctor employed by the Navy Drug Screening Laboratory (NDSL), which you state corroborates your claim that you never used cocaine. In response to the AO, you opined that the AO contains several inaccuracies which indicates the letter was drafted from a template with

little thought concerning the facts you provided. Next, you claim the ASB treated your case as a promotion board by evaluating your performance and using the allegations to separate you from the Marine Corps; and their decision to recommend you be separated with a General discharge makes no sense if they reviewed the evidence of your case.

The Board noted, on 8 June 2022, you tested positive for cocaine during a command urinalysis. The results report indicated a positive presence of cocaine with a nanogram level of 1936 nanograms per milliliter (ng/mL), the cut off being 100 ng/mL. The Board also noted that your ASB unanimously found that a preponderance of the evidence proved all acts alleged and recommended that you be separated with a General (Under Honorable Conditions) characterization of service. The Board noted, too, that the LOD and polygraph test were considered by your Commanding Officer (CO) and found to be without merit when determining your misconduct warranted separation. Subsequently, the Commanding General (CG) evaluated the LOD and the new evidence and concurred with the CO's recommendation. After additional review, the Deputy Commandant (DC) Manpower and Reserve Affairs (DC, M&RA), acting on behalf of the Commandant of the Marine Corps, directed that you be separated on 30 April 2024 with a General (Under Honorable Conditions) characterization of service.

The Board substantially concurred with the AO. In this regard, the AO determined that your claims are not indicative of material error or injustice sufficient to overcome the presumption that the numerous officials involved in processing your case failed to properly discharge their official duties. Further, the Board determined that you were properly processed for drug abuse based on your positive urinalysis for cocaine and an ASB determined, by a preponderance of the evidence, that you wrongfully used cocaine warranting separation. Finally, the Board also determined your chain of command and the DC, M&RA reviewed the evidence, your LOD, and the findings of the ASB, before determining no error occurred and that separation with a General (Under Honorable Conditions) characterization was warranted.

In regard to your claims that the ASB findings were without legal or factual basis and that you did not use cocaine, the Board found your evidence insufficient to support your claims. In this regard, the Board noted that you admitted to drinking coca tea while on vacation in Colombia and, because you enjoyed it so much, you brought some back to the United States and drank it prior to the urinalysis, which confirmed the illegal substance. The Board noted that the leaves of the coca plant contain alkaloids that—when extracted chemically—are the source for cocaine base. In regard to your claim that the ASB hearing excluded testimony of the government's key witness, the Board noted in the testimony by an individual from the NDSL that she explained that coca tea is an illegal substance in the United States and is not permissible because it is an extraction of cocaine. The Board found no error in the conduct of the ASB or their findings.

Concerning your characterization of service, the Board noted the separation authority may approve an Honorable or General (Under Honorable) conditions characterization of service as warranted by the service member's record. The Board determined that the DC M&RA acted with his discretionary authority when directing your separation and characterization of service. 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. The Board thus 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.

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 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,

9/25/2024

