



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. 5843-24
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 10 September 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 8 July 2024 advisory opinion (AO) furnished the Navy Office of Legal Counsel (BUPERS-00J) and your response to the AO.

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 apply the 24 August 2023 innocent ingestion waiver to your first offense and dismiss and remove the second offense from your record. You also request that your discharge be overturned and reinstatement on active duty. The Board considered your contention that the innocent ingestion waiver was originally supposed to apply to your first offense. You claim to have proof and facts to support your innocence. As evidence, you provided your Substance use Disorder Screening and documents from a fertility center. In response to the AO, you provided a summary of events, analysis, and asserted that you provided sufficient evidence to demonstrate a material error or injustice.

On 22 December 2023, the Commanding Officer, Southwest Regional Maintenance Center (CO, SRMC) correspondence recommending your administrative separation by "Reason of

Misconduct – Drug Abuse.” The CO noted that you reported to the SRMC, on 5 June 2023, with a positive urinalysis test for 31ng/ml of tetrahydrocannabinol (THC9) from your previous command. On 21 August 2023, non-judicial punishment (NJP) was held, you disclosed details about your estranged spouse, and the spouse’s heavy use of THC9. Your former command believed you were a victim of a toxic relationship that led to your innocent ingestion and your case was dismissed. On 24 August 2023, correspondence was submitted to the Director, Navy Drug Detection & Deterrence Branch (N173) recommending the positive urinalysis not be considered an incident of drug abuse. However, before a decision could be reached, you tested positive for 53 ng/ml of THC9 on a command urinalysis held on 23 August 2023. The CO also noted that you refused NJP and elected to have your specimen retested. On 28 November 2023, the Navy Drug Screening Laboratory (NDSL) reconfirmed your positive sample for 44 ng/ml of THC9. Ultimately, you were discharged for drug abuse with a General (Under Honorable Conditions) on 1 March 2024.

The Board substantially concurred with the AO that your evidence is insufficient to demonstrate a material error or injustice. In this regard, pursuant to MILPERSMAN 1910-146 “separation on the basis of drug abuse may be processed using notification procedures when the CO believes the circumstances surrounding the offense and its disposition do not warrant an other than honorable (OTH) characterization.” The Board noted that the CO notified you of his recommendation for administrative separation for Misconduct – Drug Abuse and you acknowledged receipt. After your second positive urinalysis for THC9, the CO determined that the incident of drug abuse warranted a General (Under Honorable Conditions) characterization of service. Acting within his/her lawful discretionary authority, the Commander, Navy Regional Maintenance Center approved your separation and granted your CO the authority to process you for administrative separation with a General (Under Honorable Conditions) characterization of service for Misconduct – Drug Abuse and reentry code RE-4. Therefore, the Board determined that your discharge for drug abuse is valid. In this regard, your administrative separation was properly processed in accordance with MILPERSMAN 1910-146, the appropriate authority authorized your separation, and the basis for separation is supported by two positive urinalysis test for THC9. As a result, the Board found no basis for reinstatement to active duty.

Concerning your request to apply the 24 August 2023 correspondence to your first offense, the Board noted that you tested positive for THC9 before a determination could be made by N173 regarding innocent ingestion. After your second positive urinalysis, the Board found no evidence of your CO’s intent to follow through with a ruling on the innocent ingestion request. Concerning your request to dismiss your second positive urinalysis, the Board determined that your positive urinalysis tests are valid and you provided no evidence that your drug tests were invalid. In fact, the Board noted that the NDSL reaffirmed the positive result for your second urine test.

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 considered the evidence you provided but found it insufficient to overcome this presumption.

Finally, you checked the “Other Mental Health” box on your application. However, the Board noted the Substance use Disorder Screening you provided contains no evidence of a mental health diagnosis. Specifically, the screening indicated “None” for mental health diagnosis and the comments only indicated your desire for outpatient therapy for support around romantic relationships. Therefore, the Board determined you provide insufficient evidence to support your claim.

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.

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,

9/26/2024

