



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

██████████
Docket No. 6107-24
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.

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 15 June 2023 Administrative Remarks 6105 (page 11) counseling entry as well as your request to remove the 6 July 2023 Administrative Remarks (Page 11) counseling entry. The Board considered your contention that you were acquitted by Special Court Martial (SPCM) and found not guilty regarding the alleged offense of possessing or using cocaine, which you claim affirms your innocence and undermines the basis for any disciplinary action stemming from the incident. The Board also considered the witness statement you provided, which you claim holds significant weight in exonerating you from any wrongdoing. Additionally, you claim that although you submitted your rebuttal statement to your sergeant major within 5 working days, it was never uploaded to your official record which you contend was in retaliation for challenging the command's decision to impose nonjudicial punishment (NJP). Finally, the Board considered your claims that the counseling entry is greatly impacting your chances for reenlistment, you have maintained a clean record throughout your tenure in the Marine Corps, and the sudden and unexpected

positive urinalysis is highly uncharacteristic of your behavior and contradicts the exemplary service you have provided.

On 26 March 2024, this Board determined denied your previous request to remove the counseling entries. In this regard, the Board noted the 15 June 2023 and 6 July 2023 counseling entries were written and issued according to the Marine Corps Individual Records Administrative Manual and Marine Corps Separation and Retirement Manual. Specifically, the counseling entries provided written notification concerning your deficiencies and afforded you the opportunity to submit a rebuttal. The 6105 provided specific recommendations for corrective action, where to seek assistance; and notified you of the consequences for failure to take corrective action. Moreover, your commanding officer (CO) signed the counseling entries, and he/she determined that your substandard performance/misconduct were matters essential to record, as it was his/her right to do. The Board also considered your contention that you were found not guilty at Special Court Martial (SPCM); however, the Board determined that the CO relied upon sufficient evidence (e.g. a positive urine sample) and acted within his/her discretionary authority when deciding that your counseling was warranted. Further, the Board noted that you do not have to be found guilty at court martial for the CO to determine a counseling entry is warranted.

After careful consideration of your application for reconsideration and review of the entire record, the Board substantially concurred with the previous Board's decision that your counseling entry is valid as written and filed. In this regard, while the Board carefully considered the witness statement you provided, it determined her statement was not persuasive and insufficient to invalidate the positive urine sample.

Regarding your claim that you submitted a rebuttal statement to your sergeant major within five working days but that it was never uploaded to your official record in retaliation for challenging the command's decision to impose NJP, the Board determined your personal statement was insufficient evidence to support your claims. Furthermore, the Board determined, even if you had provided a rebuttal statement, it would still not invalidate the counseling entries or the CO's determination to issue the counseling entries.

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. 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,

6/25/2024

