



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. 8952-24
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 17 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.

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 remove the 25 November 2023 Administrative Remarks 6105 (Page 11) counseling entry and associated rebuttal. You also request reinstatement of your rank to Sergeant (Sgt/E-5) and back pay. The Board considered your contention that you were found not guilty of violating the Uniform Code of Military Justice (UCMJ) by an administrative separation board (ASB). You assert that you would not have lost rank, pay or the significant setback in your career if your punishment was administered after the ASB's determination. You claim that the punishment might have been justified if you had violated the UCMJ; however, the ASB findings clearly established that you did not.

The Board noted that you received non-judicial punishment (NJP) for violating Article 80, UCMJ for purchasing an athletic supplement—Cardarine—a synthetic substance on the Department of Defense (DoD) banned substance list, and having it shipped to your home.

Your Commanding Officer (CO) found you guilty awarded you forfeitures of pay and suspended your reduction in rate to E-4 for six months. The Board also noted, on 25 October 2023, your urine sample tested positive for cocaine. Consequently, your CO notified you of his intent to vacate the previously suspended punishment for violating Article 112a, UCMJ and reduced you to E-4.

According to the Manual for Courts-Martial (2023 ed.) any NJP authority or commander competent to impose NJP upon the Service member concerned may vacate a suspension. The Board determined that standing alone, a positive urinalysis may be legally sufficient to sustain a conviction for wrongful use of a controlled substance, even in the face of contrary evidence offered by the defense. The Board also determined that a solitary urinalysis, without an innocent ingestion defense, is enough to support a rational basis for your CO's decision to vacate your reduction in rank and to issue the contested counseling entry.

The Board noted that pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN), you were issued a 6105 entry on 25 November 2023 properly counseling you for the wrongful use of a controlled substance. Specifically, on 25 October 2023, you tested positive for cocaine. The Board also noted that you acknowledged the counseling entry and in your statement, you indicated your belief that somewhere along the way the test was invalid because you never used cocaine. The Board determined that the contested counseling entry was written and issued in accordance with the MARCORSEPMAN and Marine Corps Individual Records Administration Manual (IRAM). Specifically, the counseling entry provided written notification concerning your deficiencies, specific recommendations for corrective action, where to seek assistance, consequences for failure to take corrective action, it afforded you the opportunity to submit a rebuttal, and your CO signed the entry. Moreover, the IRAM directs commanders to make entries in the service record of all confirmed instances of illegal drug involvement, as it is his/her right to do.

Concerning the findings by your ASB, the Board noted that your ASB unanimously found that a preponderance of evidence did not support the acts or omissions alleged and recommended your retention. The Board, however, determined that administrative counseling entries and ASB proceedings are separate with specific functions. An ASB is convened with the fundamental purpose of determining your suitability to serve on the basis of your conduct and ability to meet and maintain the required standards of performance. ASB's do not determine guilt or innocence, nor are they convened to overturn properly adjudicated misconduct. The Board also determined that ASB findings are not binding on a CO's authority to properly document illegal drug use verified by the Navy Drug Screening Laboratory. The Board found no evidence of an error in the testing of your urine or the collection process, and you provided none.

You also checked the "PTSD" and "Other Mental Health" boxes on your application. However, the Board noted you provided no evidence in support of 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, _____

10/3/2024

