



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

█
Docket No. 8970-24
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF █
XXX XX █ USMC

Ref: (a) Title 10 U.S.C. § 1552
(b) MCO 1070.12K w/CH 1
(c) MCO P1400.32D w/CH 2
(d) JAG Instruction 5800.7G
(e) MCO 1900.16 w/CH 2

Encl: (1) DD Form 149 w/attachments
(2) NAVMC 118(11) Administrative Remarks (Page 11), 1 Apr 22
(3) NAVMC 118(11) Administrative Remarks (Page 11), 21 Apr 22
(4) NAVMC 10132 Unit Punishment Book/Non-Judicial Punishment, 28 Apr 22
(5) NAVMC 118(11) Administrative Remarks (Page 11), 18 Jul 22
(6) NAVMC 118(11) Administrative Remarks (Page 11), 31 Aug 22
(7) NAVMC 118(11) Administrative Remarks (Page 11), 31 Aug 22

1. Pursuant to the provisions of the reference, Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting to remove his unit punishment book (UPB)/non-judicial punishment (NJP), Administrative Remarks (Page 11) entries, and all documents related to his NJP.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 17 September 2024 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, relevant portions of Petitioner's naval records, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, found that, before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board made the following findings:

a. On 17 February 2022, Petitioner's urine sample tested positive for Hydrocodone, a schedule II controlled substance.

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b. On 1 April 2022, Petitioner was issued a Page 11 entry notifying him that he is not recommend for promotion due to pending legal action. Petitioner acknowledged the entry and elected not to make a statement. Enclosure (2).

c. On 21 April 2022, Petitioner was issued a Page 11 entry notifying him that he is not recommend for promotion due to pending legal action. The entry indicates, "SNM NOT AVAILABLE", and the entry was signed by the Commanding Officer (CO). Enclosure (3).

d. On 28 April 2022, Petitioner underwent a NJP hearing for the violating Uniform Code of Military Justice (UCMJ), Article 112a. Block 16 of enclosure (2) indicates, "I find you not guilty and I award no punishment." Enclosure (4).

e. On 18 July 2022, Petitioner was issued a Page 11 entry counseling him for violating UCMJ, Article 112a for the wrongful use of a controlled substance. Petitioner acknowledged the entry and elected not to make a statement. Enclosure (5).

f. On 31 August 2022, Petitioner was issued a Page 11 entry for testing positive for a controlled substance, and medical personnel confirmed there was no lawful use of the substance in his medical record. The entry also noted that pursuant to Federal Law, 18 U.S.C. section 922(g)(3), it is unlawful for him "to possess, ship, transport, or receive a firearm or ammunition for personal use for a period of 12 months . . ." Petitioner acknowledged the entry and elected not to make a statement. Enclosure (6).

g. On 31 August 2022, Petitioner was issued a Page 11 entry for violating Article 112a, UCMJ, based upon his admission to wrongful use of a controlled substance at NJP. The entry also noted that pursuant to Federal Law, 18 U.S.C. section 922(g)(3), it is unlawful for him "to possess, ship, transport, or receive a firearm or ammunition for personal use for a period of 12 months . . ." Petitioner acknowledged the entry and elected not to make a statement. Enclosure (7).

h. In his application, Petitioner contends he was found not guilty at NJP and the documents are preventing his reenlistment approval. Enclosure (1).

CONCLUSION

Upon careful review and consideration of all the evidence of record, the Board determined that Petitioner's request warrants partial relief.

The Board noted that Petitioner was notified that he was selected but will not be promoted to sergeant for the months of April 2022 and May 2022 due to pending legal action after testing positive for a controlled substance. The Board also noted that Petitioner acknowledged enclosure (2), he elected not to submit a statement, and Petitioner's CO signed the entry. The Board determined that enclosure (2) was written and issued in accordance with reference (b). The Board also determined that enclosure (3) is valid and the lack of Petitioner's signature is a harmless error. Petitioner previously acknowledged the basis for not being recommended for

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promotion and, while pending adjudication of his positive urinalysis, there was no expectation that he would have been promoted. Moreover, reference (c) prohibits the promotion of Marines within 18 months of the date confirmed distribution, use, or possession of illegal drugs took place. Additionally, the 18 month period begins on the date positive confirmation is received from the Department of Defense certified drug testing laboratory.

Concerning Petitioner's NJP, the Board noted that the CO that imposed NJP found Petitioner not guilty and did not award any punishment. According to reference (d), "[i]f no punishment is awarded at an Article 15, UCMJ proceeding, the effect is the same as if the charges were dismissed at the proceeding." Reference (c) also states, no record of NJP will be made in the member's service record and the fact that the member went to an Article 15, UCMJ proceeding may not be referenced in the member's record. However, reference (d) does not restrict any reference to, use of the facts, or evidence underlying the offenses alleged at the Article 15, UCMJ proceeding for other authorized purposes for the same allegations or offenses. Based on the foregoing, the Board determined that enclosure (4) should be removed.

Concerning enclosure (5), the Board determined that Petitioner's counseling entry was issued pursuant to reference (d). Petitioner acknowledged the counseling entry and elected not to submit a statement. The counseling entry provided written notification concerning his deficiencies, specific recommendations for corrective action, where to seek assistance, consequences for failure to take corrective action, and it afforded him the opportunity to submit a rebuttal. Moreover, Petitioner's CO signed the entry, demonstrating his/her determination that his misconduct was a matter essential to record.

Concerning Petitioner's 31 August 2022 counseling entries, the Board noted that Petitioner's previous CO found him not guilty and awarded no punishment at NJP; however, Petitioner's current CO chose to document Petitioner's misconduct in enclosures (6) and (7). The Board determined that the counseling entry documenting Petitioner's positive urine sample and lack of lawful medical evidence is valid as written and filed. The Board also determined the counseling entry documenting Petitioner's admission to the wrongful use of a controlled substance requires correcting. Reference (d) prohibits any reference to Petitioner's NJP in his record. Accordingly, the statement, "at NJP" should be redacted from enclosure (7).

RECOMMENDATION

In view of the above, the Board directs the following corrective action.

Petitioner's naval record be corrected by removing enclosure (4).

Petitioner's naval record be corrected by modifying enclosure (7). Specifically, redact the statement, "at NJP."

Any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record, and that no such entries or material

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be added to the record in the future. This includes, but is not limited to, all information systems or database entries that reference or discuss the expunged material.

No further corrections to Petitioner's record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above-entitled matter.

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)), and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

10/3/2024

[REDACTED]