



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. 9862-24
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 5 November 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 14 August 2024 Report of Misconduct (ROM), 4 September 2024 Status in the Navy Letter, 8 May 2024 promotion delay notice, any material or entries inconsistent with the foregoing. You also request promotion to lieutenant junior grade (LTJG/O-2) effective 27 May 2024, back payment of all pay, allowances, allotments, compensation and all other due or proper collateral relief. You further request that any material removed from your naval record be returned to the Board, together with a copy of the Board's report of proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of your record. The Board considered your chronological statement of events, and numerous impressions of the investigative and administrative separation process. The Board also considered your statement that confusion arose from the fact that the Standard Form

(SF) 86 offered you the option of selecting tetrahydrocannabinol (THC) from a drop-down menu. You provided that you “only consumed THC through edibles or THC laced vape pens on a few occasions and viewed consuming them to be ‘like drinking alcohol.’” You also provided that Standard Form (SF) 86 section 23 does not distinguish, when it offers a service member, the option of selecting the chemical “THC” from a drop-down menu, between a “drug” and a “controlled substance”. You never admitted to having used “marijuana” or a “controlled substance.” The Board also considered your numerous contentions that:

(1) Documenting non-adjudicated allegations of misconduct in your record was erroneous and unjust. You claim that you never had a chance to contest the allegations of misconduct or substandard performance implied by the ROM and the Notice of Intent. PERS-834’s assertion that MILPERSMAN 1611-010 allows insertion of reference to uncharged and unadjudicated misconduct into your record because you are a probationary officer is incorrect. The Commanding Officer, █ (█) failed to explain why he failed to adjudicate your alleged misconduct. The evidence of record unequivocally proves that you did not commit any misconduct. The evidence of record reflects unequivocally that you admitted only to briefly experimenting with legal hemp-derived products.

(2) Documentation requiring you to show cause for retention in the naval service should be expunged because the requirement to show cause was erroneous and unjust. You claim there was no evidence in your naval record that could have triggered your show-cause proceedings. The ROM itself was inadequate to constitute such a record because it offered nothing but hearsay. You did not know and had no reason to believe that the substance you used had any contraband nature, since the physical evidence reflected that it only contained legal, hemp-derived THC. Your brief use of THC had no adverse effect on your performance, conduct, behavior, or mission effectiveness, health, family, community, or Navy, nor did it lead to any act of drug-related misconduct. Your use did not have the purpose of inducing intoxication, excitation, stupefaction, or countering the physiological or psychological effects of withdrawal. As such, that use was not wrongful. You argued that your case should have been adjudicated by a Board of Inquiry (BOI) under controlling regulations, which unequivocally provide that an allegation of unlawful drug activity (i.e., violation of UCMJ Article 112a) be processed using BOI procedures. Additionally, you were erroneously, unjustly, and unlawfully deprived of a hearing before a board of officers along with all the procedural protections and entitlements that attend such a hearing, rendering your show-cause proceedings null and void.

(3) Your promotion withhold to LTJG is erroneous and unjust.

The Board noted that you completed a SF 86 in conjunction with applying for pre-commissioning security clearance. You mark “yes” to section 23 – “Illegal Use of Drugs or Drug Activity.” Specifically, “In the last seven (7) years, have you illegally used any drugs or controlled substances? You estimated use in June 2020 and explained, “I have only consumed THC through edibles or THC laced vape pens on a few occasions in my life. I experimented with edibles in 2020 and smoked as well. All together I have been under the influence of THC 3-5 times and used it very infrequently.” In your explanation of why you intend or do not intend to use this drug in the future, you explained, “I realized the risk that I was taking for my career and stopped using it all together.” The Board also noted the Defense Counterintelligence and Security Agency (DCSA CAS)

memorandum, Intent to Revoke Eligibility for Access to Classified Information and Assignment to Duties Designated SCI. The memorandum noted that your personal history led to the security concerns listed in the Statement of Reasons, specifically, drug involvement, substance misuse and criminal conduct, based on your admission to using marijuana/THC through edibles or THC laced vape pens three to five times. The Board noted, too, that during your interview with an investigator you admitted to using marijuana while holding a security clearance. After due process, DCAS CAS granted a favorable security determination based on your responses to the Statement for Reasons and comments that sufficiently explained, mitigated, or provided extenuating circumstances. The CO, █, the Show Cause Authority (SCA) determined that you would be processed for administrative separation. In correspondence to the Assistance Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)), the Deputy Chief of Naval Personnel (CNP) provided a summary of the basis for your Uniform Code of Military Justice (UCMJ) violations; he also noted that non-judicial punishment (NJP) was not offered although you could have been charged with violations of UCMJ Articles 92 and 112a. The Deputy CNP determined that you have been honest and shown remorse for your conduct and recommended retaining you in the naval service. In response, the Principal Deputy, ASN (M&RA) approved your retention.

Concerning the submission of your ROM, the Board determined that the CO, █ properly submitted the ROM to NPC (PERS-834) as notification of your misconduct and his finding that the preponderance of evidence supports allegations of your admission of using an illegal substance. The Board noted that policy requires Commanders to notify the Navy Personnel Command (NPC) when an officer is under investigation or pending possible disciplinary action. The CO determined that your misconduct warranted promotion delay or removal and you should be required to show cause. The Board also determined that the CO was required notify NPC about his determination regarding your misconduct, and whether promotion delay or removal and a requirement to show cause is warranted. However, your CO had no requirement to explain why he chose not to impose NJP.

The Board noted that MILPERSMAN 1611-010 addresses cases where an officer has allegedly committed misconduct or performed poorly, but there is no NJP, court-martial, or civilian conviction adjudicating the allegations exist, and when no punitive action has been made against the officer. In such circumstances, if the Commander believes that the allegations warrant administrative processing, the Commander may submit an ROM requesting administrative processing. In this case, your CO clearly believed that your misconduct warranted administrative processing. The Board determined that your CO acted properly and within his discretionary authority when he submitted the ROM and when determining there was sufficient evidence warranting the delay or removal of your promotion and processing for administrative separation. Regarding your ability to contest the ROM, contrary to your statement, the Board noted that you were afforded the opportunity to contest the allegations of misconduct and you availed yourself of that opportunity. Specifically, on 11 September 2023, you submitted a statement to the Commander, NPC (PERS-834) via your chain of command.

Concerning the inclusion of the ROM into your official record, the Board determined that you are a probationary officer; therefore, regardless of the decision to you retain you for naval service, your ROM was properly filed in your official record in accordance with policy. In this regard, SECNAVINST 1920.6 and MILPERSMAN 1161-010 defines a probationary officer as

“A commissioned officer on the ADL in the grade of O-1 and above with less than six years of active commissioned service.” According to MILPERSMAN 1611-010, regarding non-adjudicated adverse actions, “the ROM or the RSP will *only* be included in the officer’s OMPF if a follow-on administrative action is approved (e.g., DFC approval, *probationary show-cause approval*, retirement or resignation in lieu of a BOI, a BOI which finds basis for separation, etc.).” Additionally, on 1 October 2024, in response to your counsel’s request to remove the ROM, NPC notified your counsel that “Unfortunately, PERS-834 is bound by policy when dealing with a “probationary” officer” and counsel was directed to the above MILPERSMAN guidance.

Concerning your argument that you did not commit misconduct and only briefly experimenting with legal hemp-derived products. The Board found sufficient evidence that you violated UCMJ Article 92, failure to obey an order or regulation and Article 112a, wrongful use of controlled substances. ALNAV 47/20 prohibits the use of all THC and Hemp products and prohibits Sailors from using any product made or derived from hemp (as defined in 7 U.S.C. 1639o), including CBD, regardless of the product's THC concentration, claimed or actual, and regardless of whether such product may lawfully be bought, sold, and used under the law applicable to civilians. The Board noted your SF 86 voluntarily admission to using illegal drugs during June 2020 in the form of edibles, and vape pens laced with THC, admission to the investigator that you used illegal drugs, and your brother’s statement that the substances provided to you included peach rings containing 15mg THC-9 derived from hemp and vape containing THC-8. THC-9 is illegal on the federal level in the U.S. and is listed as a Schedule I controlled substance. Moreover, the Manual for Courts-Martial does not provide any exemptions for experimental use. The Board thus determined the aforementioned evidence was sufficient to conclude that you committed misconduct and to form a basis for processing you for administrative separation.

Concerning your administrative processing for separation, the Board determined that you were properly processed for administrative separation in accordance with applicable regulations. The Board also determined that your contentions lack merit. In this regard, MILPERSMAN 1910-233 provides guidance for mandatory administrative separation processing and directs Commanders to process individuals who, based on reliable evidence, have committed misconduct “drug abuse”. Additionally, SECNAVINST 1920.6 provides that processing for separation is mandatory for unlawful drug involvement. The Board noted that you were properly notified of the reasons for administrative separation processing. You were advised of your rights, acknowledged those rights, and your counsel submitted matters for consideration. The Board further determined that a history of past misconduct is not required to process you for administrative separation.

Concerning your entitlement to a BOI, the Board determine that you were not entitled to a BOI. Although SECNAVINST 1920.6 states, “Officers will be processed for separation on the basis of unlawful drug activity using BOI procedures,” MILPERSMAN 1611-010 states that “Probationary officers are not entitled to a BOI, but one may be offered if determined appropriate by the SCA.” A BOI is only afforded to probationary officers when the SCA deems the circumstances are sufficient for immediate separation. In your case, there is no evidence that the SCA made a determination that a BOI was necessary.

Concerning your promotion to LTJG, the Board noted that you were notified that the Commander, NPC delayed your permanent promotion to LTJG. The correspondence informed you that a review

