



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

█  
Docket No. 9928-24  
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 19 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, as well as the 8 October 2024 advisory opinion (AO) furnished by the Navy Personnel Command (NPC) (PERS-32). The AO was provided to you on 11 October 2024, and you were given 30 days in which to submit a response. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

The Board carefully considered your request to remove the evaluation report for the reporting period 16 November 2023 to 23 July 2024. The Board considered your contention that the evaluation report was submitted due to a positive urinalysis and while you were pending an administrative separation board (ASB). You claim the ASB found you not guilty and the case was dismissed. You also claim the adverse evaluation report is holding up your advancement to E-7. As evidence, you provided correspondence from the Reporting Senior (RS) recommending removal of the contested evaluation report due to the results of the ASB.

The Board, however, substantially concurred with the AO and determined that your evaluation report is valid as written and filed according to the applicable Navy Performance Evaluation System Manual (EVALMAN). In this regard, the Board noted that you received a Special/Regular/Significant Problems evaluation report. The RS commented, "Evaluation submitted upon blocks 35 and 36 confirmed illegal drug use by positive urinalysis report on

28 May 24.” The Board also noted that the EVALMAN permits the RS to comment on misconduct whenever the misconduct has been clearly established through reliable evidence to the RS’s satisfaction. In this case, the Board determined that your positive urinalysis constitutes reliable evidence of misconduct. The Board found no evidence invalidating your positive urinalysis and you provided none.

Concerning your reliance on the ASB findings, the Board noted that MILPERSMAN 1910-233 requires mandatory administrative separation processing for drug abuse when established by sufficient evidence. An ASB is administrative in nature with the fundamental purpose of determining suitability to serve based on conduct and ability to meet and maintain the required standards of performance. An ASB is not a trial and does not determine guilt or innocence. Therefore, a finding to retain the service member is not tantamount to a dismissal of charges. Moreover, according to the Manual for Courts-Martial, 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 determined, if a urinalysis alone can lead to proof beyond a reasonable doubt, then a solitary urinalysis without an innocent ingestion defense is enough to support a rational basis for the RS to document your positive urinalysis in your evaluation report. The Board also noted the correspondence from the RS; however, the Board found the basis for the request unpersuasive. The outcome of your purported ASB is not binding on a Commanding Officer nor does it act to invalidate a properly tested positive urinalysis. 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,

12/16/2024

