



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

██████████
Docket No. 495-25
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.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 11 March 2025. 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.

The Board carefully considered your request to remove the Uniform Code of Military Justice (UCMJ), Article 112a violation from the Navy Criminal Investigation Service (NCIS) titling. The Board considered your statement that you admitted to using cocaine, marijuana, methamphetamine, and over the counter cough medicine while seeking treatment. It is your contention that based on the previous Board's decision to change your characterization of service and narrative reason, and lack of criminal conviction, the NCIS record is unduly prejudicial. It is your assertion that you were subjected to an administrative procedure, not prosecuted for a crime in a court martial. You provide that titling is done to ensure Department of Defense (DoD) law enforcement agencies can later identify the location of investigative files for the purpose of ensuring national security. Therefore, any entry in the Defense Central Index of Investigations (DCII) should be expunged as it is improper, irrelevant and does not further national security interest.

The Board noted that an investigation was initiated after the legal officer reported that you admitted to using cocaine, marijuana, methamphetamine, and over the counter cough medicine. You also admitted to using drugs between October 2018 and an unknown date before you

attended a rehabilitation program for drug use. The Board also noted that you received nonjudicial punishment (NJP) on 30 July 2019 for violating Uniform Code of Military Justice (UCMJ), Article 112a for the wrongful use of cocaine, marijuana, methamphetamine and dextromethorphan.

Through counsel, you submitted a request to NCIS to review and expunge your DCII NCIS entry for allegations of violating UCMJ, Article 112a. In response, the NCIS Office of Counsel reviewed the investigative file and denied your request, in part. In this regard, the NCIS Office of Counsel found that probable cause still exists. NCIS based this finding upon several facts: (1) you admitted to using cocaine, marijuana, and over the counter cough medicine. (2) You provided the names of two additional witnesses that could corroborate your use. (3) A military prosecutor concurred that probable cause existed to proceed with the collection and submission of your fingerprints and criminal history entry information to the National Crime Information Center. (4) A toxicology report indicated the presence of cocaine and “THC” in your urine sample taken on 11 February 2019 (presumptive positive). (5) You accepted NJP for violating Article 112a, UCMJ, and you were found guilty by a preponderance of the evidence. NCIS did however modify your record by including the disposition of your NJP and noting that the NJP does not constitute a criminal conviction.

The Board found your argument regarding national security interest unpersuasive. Based on the totality of evidence, the Board substantially concurred with the NCIS determination that your name was properly titled and indexed in accordance with Department of Defense Instruction (DoDI) 5505.07. In this regard, the Board noted that titling and indexing are administrative procedures and will not imply any degree of guilt or innocence. Moreover, according to DoDI 5505.07, “Once the subject of a criminal investigation is indexed in DCII, the information will remain in DCII, even if they are found not guilty, unless the DoD LEA head or designated expungement official grants expungement.” DoDI 5505.07 also directs DoD Law Enforcement Agencies (LEAs) to “title subjects of criminal investigations in DoD LEA reports and index them in DCII as soon as there is credible information [emphasis added] that they committed a criminal offense.” The Board determined that NCIS relied upon credible information when your name was indexed and the NCIS Office of Counsel provided sufficient justification to support their finding that probable cause still exist.

Notwithstanding the previous Board’s decision to change your characterization of service and narrative reason for separation, the Board noted that the previous Board left your misconduct undisturbed. The Board found the evidence in your petition insufficient to outweigh the evidence regarding your misconduct, credibility of the NCIS Investigation, or probable cause standard. 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 also indicate other mental health in your application. The Board, however, determined there was insufficient evidence to conclude that your titling was the result of a mental health diagnosis. In making this determination, other than your statement regarding treatment for drug use, the Board found no evidence of a mental health diagnosis or its nexus to your misconduct.

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,

3/26/2025

