



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

JSR
Docket No. NR6992-13
20 November 2014

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

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 3 Jun 13 w/attachments,
as amended by DD Form 149 dtd 19 Jul 13
(2) HQMC JAR7 memo dtd 22 Jul 14
(3) MCRC memo dtd 27 Aug 14
(4) Counsel's ltr dtd 10 Nov 14 w/enclosures
(5) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the Deputy Assistant Chief of Staff, G-3 letter 1560 MCRC (ON/E) of 17 March 2010 with enclosure, subject: Forwarding of Marine Corps Enlisted Commissioning and Education Program (MECEP) Disenrollment Documents; Case of [Petitioner] (copy at Tab A). Petitioner also requested immediate reinstatement into the MECEP.

2. The Board, consisting of Messrs. Hicks, Spooner and Swarens, reviewed Petitioner's allegations of error and injustice on 20 November 2014, 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, 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, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. In enclosure (2), the Headquarters Marine Corps Judge Advocate Division (JAR7) commented to the effect that Petitioner's request regarding the contested documentation, which reflects he was disenrolled from the MECEP for domestic violence and substandard performance, has merit and warrants favorable action because of administrative errors in his disenrollment. JAR7 concluded that Petitioner "was denied due process...when the April 2005 and July 2005 civilian law enforcement investigations into alleged incidents of domestic violence were included in his OMPF [Official Military Personnel File] without allowing him the opportunity to contest, explain, or rebut the information." JAR7 further stated that "Allowing [Petitioner] an opportunity to contest, explain, or rebut the information regarding the two 2005 incidents would have served the purpose of allowing [Petitioner] to rebut the information prior to CG [Commanding General] MCRC [Marine Corps Recruiting Command]'s final action on his disenrollment and its inclusion in his OMPF." JAR7 also concluded that the Performance Review Board that recommended Petitioner's disenrollment was improperly constituted. Specifically regarding the July 2005 incident, JAR7 concluded that the Commanding Officer's having learned of it by obtaining information from the Camp Pendleton Family Advocacy Program did not violate Marine Corps Order (MCO) P1700.24B (Marine Corps Personal Services Manual).

c. In enclosure (3), the MCRC commented to the effect that Petitioner should not be reinstated into the MECEP, stating that "this command would have disenrolled him from the MECEP based on multiple deficiencies-not including the domestic violence matters." MCRC noted that Petitioner's letter of 2 November 2009 (copy at Tab A) acknowledges that he "saw enough [counseling notations] before July [2009] to warrant a performance review board independent of my arrest [on 11 July 2009, civilian authorities arrested Petitioner on suspicion of battery against his wife]."

d. Enclosure (4) concurs with JAR7 but disagrees with MCRC, maintaining that Petitioner should be reinstated into the MECEP because his disenrollment was administratively defective. Counsel explains the point Petitioner was making in the quotation from his letter of 2 November 2009 was that action to effect his disenrollment would not have been initiated, but for the domestic violence arrest. He contends this arrest should

not have been held against Petitioner, because it did not result in charges against him, a civil conviction, or any military disciplinary action. Counsel contends that the incident of July 2005 should not have been considered either, as the command learned of it as the result of a violation of both MCO P1700.24B and the Privacy Act of 1974.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of enclosure (2), the Board finds the existence of an error and injustice warranting partial relief, specifically, removal of the disenrollment documentation. The Board finds that Petitioner's request for reinstatement into the MECEP should be denied, as his disenrollment was justified without considering any of the domestic violence incidents. In view of the foregoing, the Board directs the following limited corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the Deputy Assistant Chief of Staff, G-3 letter 1560 MCRC (ON/E) of 17 March 2010 with enclosure, subject: Forwarding of Marine Corps Enlisted Commissioning and Education Program (MECEP) Disenrollment Documents; Case of [Petitioner].

b. That 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 be added to the record in the future.

c. That the remainder of Petitioner's request be denied.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) 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.


JONATHAN S. RUSKIN
Recorder

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.


ROBERT J. O'NEILL
Executive Director