



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

[REDACTED]
Docket No. 3053-16
MAY 22 2017

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

Subj: REVIEW OF NAVAL RECORD ICO

[REDACTED] USMCR

Ref: (a) Title 10 U.S.C. 1552
(b) MCO P1070.12K eff 14 Jul 00

Encl: (1) DD Form 149 dtd 29 Mar 16
(2) NAMVC 118(11) dtd 6 Mar 15
(3) Petitioner's Rebuttal Statement dtd 6 Mar 15
(4) [REDACTED] witness statement dtd 23 Mar 16
(5) HQMC memo 1070 MIQ dtd 19 Dec 16

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 to remove an Administrative Remarks (6105) counseling dated 6 March 2015, from his Official Military Personnel Record (OMPF).

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 3 March 2017 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. On 6 March 2015, the Petitioner was issued an Administrative Remarks (6105) counseling for violation of Article 121 (Larceny) of the Uniform Code of Military Justice (UCMJ). The Petitioner took merchandise without permission or payment on 31 December 2014. See enclosure (2).

c. On 6 March 2015, the Petitioner wrote a rebuttal statement which indicated he was at fault for his actions. See enclosure (3).

d. On 23 March 2016, The Petitioner was provided a witness statement generated by [REDACTED] [REDACTED] The witness indicated the Petitioner was not provided with the ample time requirement of five working days to complete and provide a rebuttal statement in accordance with the Marine Corps Individual Records Administration Manual (IRAM). See enclosure (4).

e. On 19 December 2016, Headquarters United States Marine Corps provided an unfavorable advisory opinion in this case. The Petitioner was able to provide the burden of proof that an injustice was created on behalf of his command by impeding him to utilize five working days to complete the rebuttal statement. Although the Petitioner was not afforded ample time to submit a rebuttal statement, the Administrative Remarks (6105) entry was written in accordance with reference (b).

f. On 3 March 2017, the three-panel Board concluded to provide the Petitioner relief due to claims of an injustice. See enclosure (5).

CONCLUSION

Upon review and consideration of all the evidence of record, and notwithstanding the opinion expressed in enclosure (5), the Board found the existence of an error/injustice to the Petitioner's military record. Although the Petitioner's Administrative Remarks (6105) entry was justified due to Article 121 violation of the UCMJ, an injustice occurred when the Petitioner was not provided with ample time to write a rebuttal statement. Under this circumstance, the Petitioner demonstrated the Administrative Remarks (6105) entry dated 6 March 2015, was issued to him in an unjust manner. Thus, relief should be granted.

RECOMMENDATION:

That Petitioner's naval record be corrected, where appropriate, to show that:

a. That Petitioner's naval record be corrected by removing his Administrative Remarks (6105) counseling entry dated 6 March 2015 from his OMPF.

b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected from Petitioner's record and that no such entries or material be added to the record in the future.

4. It is certified that 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.

[REDACTED]
Recorder

5. The foregoing action of the Board is submitted for your review and action.



Executive Director

Reviewed and ~~Approved~~ Disapproved, *See attached memo. (Bw)*



6/9/17

(A) ASN(M+RA)



THE ASSISTANT SECRETARY OF THE NAVY
(MANPOWER AND RESERVE AFFAIRS)
1000 NAVY PENTAGON
WASHINGTON, D.C. 20350-1000

June 9, 2017

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS

Subj: BCNR PETITION OF [REDACTED] USMCR

The subject petition was forwarded to me pursuant to the provisions of SECNAVINST 5420.193, Enclosure (1), Section 6.e.(1)(a), because comments by proper naval authority are inconsistent with the Board's recommendation. Further, the Secretary has delegated authority to me to render decisions in such cases. Pursuant to this authority, the recommendation of the Board panel to grant [REDACTED] full relief – removing Administrative Remarks (6105) counseling dated March 6, 2015, from his Official Military Personnel File (OMPF) – is disapproved.

I have considered this case under the provisions of 10 U.S.C. § 1552 and disagree with the reasoning of the Board that, although the Administrative Remarks counseling was justified due to [REDACTED] violation of Article 121 of the Uniform Code of Military Justice (larceny of \$275.21 worth of merchandise while on weekend drill), an injustice nevertheless occurred because the command did not provide [REDACTED] ample time to write a rebuttal statement. For this reason, the Board recommends removing the Administrative Remarks counseling from [REDACTED] OMPF. I disagree.

In its advisory to the Board, dated December 19, 2016, Headquarters, U.S. Marine Corps (HQMC), opined that [REDACTED] command unjustly impeded him from utilizing five working days to submit his rebuttal statement and likely coerced him into circling that he chose "not to" submit a written rebuttal. Although the command did not afford [REDACTED] ample time to submit a rebuttal statement, the Administrative Remarks counseling was written in accordance with MCO P1070.12K, Marine Corps Individual Records Administration Manual (IRAM). For this reason, HQMC recommended disapproval of his petition, though it did recommend that [REDACTED] be afforded the opportunity to submit a written rebuttal to be filed with the Administrative Remarks counseling in his OMPF.

In his petition, [REDACTED] states that he wanted to make a statement, not to deny what he did, but to explain himself, address his shortcoming, accept responsibility for what he did, and apologize to the Marine Corps. However, the First Sergeant who was pressuring him to not make a statement told [REDACTED] that he should still circle "not to" on the Administrative Remarks counseling and write a statement then and there that would still go into his OMPF. (The First Sergeant apparently believed that a

statement acknowledging one's wrong and accepting responsibility is not a rebuttal.) Later that day [REDACTED] went to his Career Planner who allowed him to write a rebuttal statement admitting he was at fault for his actions. The Career Planner stated to the Board that, after he reviewed the handwritten statement, [REDACTED] left to deliver it to the First Sergeant; however, the statement is not in [REDACTED] OMPF.

I agree with the Board and HQMC that the First Sergeant unjustly denied [REDACTED] five working days to submit his rebuttal statement. However, considering [REDACTED] admits his wrongdoing, HQMC recommends that [REDACTED] be afforded the opportunity to submit a written rebuttal to be filed with the Administrative Remarks counseling in his OMPF, and [REDACTED] received counseling instead of discipline under the UCMJ for a violation of Article 121, I believe it would be inequitable to remove the Administrative Remarks counseling and leave [REDACTED] unaccountable for his admitted wrongdoing.

For these reasons, [REDACTED] petition for relief is denied; however, I direct that he be given the opportunity to prepare a rebuttal statement and, in the event he presents such statement, it be placed in his OMPF.

[REDACTED]

Acting