



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

[REDACTED]
Docket No: 3961-16
MAR 12 2017

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED] USMC,
XXX-XX-[REDACTED]

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

Encl: (1) DD Form 149
(2) Case Summary
(3) Subject's naval record (excerpts)
(4) HQMC memo 1610 MMRP-13/PERB dtd 29 Apr 16
(5) Petitioner's ltr 1610 CB dtd 19 May 16

1. Pursuant to the provisions of the reference, Petitioner, an enlisted member of the Marine Corps, filed enclosure (1) with this Board requesting that his adverse fitness report for the reporting period from 13 March 2015 to 28 August 2015 ("contested report") be removed from his official military personnel file (OMPF).
2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 27 February 2017, and pursuant to its regulations, determined that the partial 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. In addition, the Board considered the advisory opinion (AO) furnished by Headquarters, Marine Corps (MMRP-13) dated 29 April 2016, and Petitioner's rebuttal statement dated 19 May 2016. Enclosures (1) through (5) apply.
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. Enclosure (1) was filed in a timely manner.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED] USMC,
XXX-XX [REDACTED]

c. Petitioner received an adverse fitness report for the reporting period from 13 March 2015 to 28 August 2015. Petitioner asserted that the contested report was revised several times because the Reporting Senior (RS) and the Reviewing Officer (RO) disagreed on the content, and that statements made by the RO are incorrect. He further contended that the RO forwarded the contested report to the Third Officer Sighter (3OS) without giving him an opportunity to acknowledge it or submit a statement in rebuttal.

d. The AO recommended that the Board deny Petitioner's request to remove the contested report from his OMPF. In this regard, the Performance Evaluation Review Board (PERB) stated that the number of iterations to get an assessment correct is immaterial, and that the contested report went through a valid adjudication process. The AO further states that Petitioner did view and respond to the RO comments, but due to a "bug" in the system, the date of Petitioner's response was not recorded. Finally, the AO advised that the 3OS is not required to notify Petitioner of his final adjudication unless he added new adversity not previously mentioned by the RS or RO, and that no such adversity was mentioned.

e. In response the AO, Petitioner submitted a rebuttal statement and a copy of the contested report's tracking history retrieved from the Automated Performance Evaluation System. Petitioner acknowledged that he submitted a statement in response to his RO's comments, but that the statement was submitted during an earlier iteration of the contested report, and he again contended that after his RO revised the contested report in a later iteration, he forwarded the contested report to the 3OS without giving the Petitioner an opportunity to revise his previously submitted statement in response to the RO's comments. The tracking history shows that the contested report went through a valid adjudication process between 25 August and 27 October 2015, before being submitted for inclusion in Petitioner's OMPF. However, the contested report was rejected by Headquarters, Marine Corps (MMRP), and returned to the RS on 9 November 2015. The tracking history shows the RS forwarded the contested report to the RO on 30 November 2015, and that the RO sent it to the 3OS that same day, without routing it to the Petitioner first. Additionally, the Addendum Page (page 4 of 5) with Petitioner's statement to the RO comments is not electronically dated.

CONCLUSION:

The Board, after careful consideration of all the evidence of record, concludes that the Petitioner's request warrants favorable action in the form of partial relief. In this regard, the Board is not willing to remove the contested report because the Board found it to be a valid report and concurred with the AO that the Petitioner failed to substantiate the contested report is anything other than an accurate and fair assessment of his exhibited efforts and results. However, the Board was not convinced that he had an opportunity to review or submit a statement regarding the RO's comments after the contested report was returned from MMRP for revision. The Board noted that there may have been a "bug" in the system that prevented the electronic dating of the contest report and logging the transmittal from the RO to the Petitioner during the second iteration, but concluded that the tracking history shows that it was not routed

Subj: REVIEW OF NAVAL RECORD OF [REDACTED] USMC,
XXX-XX [REDACTED]

to the Petitioner. The Board further concluded that the Petitioner should have an opportunity to submit a revised statement in response to the RO comments made in the contested report. Further, that if Petitioner elects to submit a revised response to the RO comments, that the contested report be sent to the 3OS for adjudication, and if the 3OS adds new adversity not previously mentioned by the RS or RO, that the contested report be referred to Petitioner for acknowledgement and the opportunity to make a statement prior to final submission.

In view of the above, the Board directs the following partial corrective action.

RECOMMENDATION:

a. That Petitioner be allowed to submit a revised Addendum Page in place of the current Addendum Page (4 of 5) in response to the RO comments of the contested report within 30 days from receipt of this letter.

b. That that the contested report be sent to the 3OS for adjudication if Petitioner submits a revised statement in response to the RO comments, and if the 3OS adds new adversity not previously mentioned by the RS or RO, the contested report be referred to Petitioner for acknowledgement and the opportunity to make a statement prior to final submission.

4. 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.

[REDACTED]
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 Regulation, 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.

[REDACTED]
Executive Director