



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

█
Docket No. 793-20
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █
XX XX █ USMC

Ref: (a) Title 10 U.S.C. § 1552
(b) MCO P1070.12K

Encl: (1) DD Form 149 w/enclosures
(2) Administrative Remarks (Page 11) of 21 May 18
(3) Administrative Remarks (Page 11) 6105 counseling of 20 June 18 and Rebuttal
Statement of 25 June 2018
(4) LMS ltr 5800 Legal 20 Aug 19
(5) HQMC memo 1070 JPL of 21 Feb 20

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that his naval record be corrected by removing Administrative Remarks (Page 11) of 21 May 2018 (enclosure 2) and 6105 counseling of 20 June 2018 and his rebuttal statement of 25 June 2018 (enclosure 3) from his official military personnel file (OMPF).

2. The Board, consisting of █ and █ reviewed Petitioner's allegations of error and injustice on 2 March 2021 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, relevant portions of Petitioner's 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, found as follows:

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

b. On 16 May 2018 Petitioner tested positive on a command directed urinalysis for steroids. On 21 May 2018 Petitioner received enclosure (2) notifying him that he was not eligible for promotion to corporal for 18 months. Petitioner received enclosure (3) for wrongfully using steroids, a Schedule III controlled substance in violation of Article 112a of the Uniform Code of Military Justice (UCMJ). Petitioner contends the Page 11 entries along with his rebuttal should be removed from his OMPF as he did not take steroids and the urinalysis results were not reliable because the lab reported an error with the sample. Petitioner included enclosure (4), a letter from his Commanding Officer (CO) to the legal section of the Installation Personnel Administration Center stating the same.

c. Enclosure (5), an advisory opinion (AO) furnished by Headquarters, Marine Corps (JPL), recommended granting Petitioner's request. The AO noted that the Navy Drug Screening Laboratory in

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

Great Lakes reported a “FN” discrepancy code, indicating there was an error with the sample’s chain of custody paperwork. The AO further noted that there was insufficient evidence to prove the substance Petitioner took was an anabolic steroid, a controlled substance.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board determined that Petitioner’s request warrants relief. The Board found the Page 11 and 6105 entries were unjust as the urinalysis test was unreliable and there was no credible evidence that Petitioner wrongfully used steroids in violation of Article 112a of the UCMJ. The Board thus concluded that Petitioner’s Page 11 and 6105 entries and Petitioner’s rebuttal shall be removed (enclosures 2-3).

RECOMMENDATION

In view of the above, the Board recommends the following corrective action.

Petitioner’s naval record be corrected by removing (enclosure 2), Page 11 of 21 May 2018 and 6105 of 20 June 2018 and Petitioner’s rebuttal statement of 25 June 2018 (enclosure 3).

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. This includes, but is not limited to, all information systems or database entries that reference or discuss the expunged material.

Note: By removing the 18-month promotion restriction Page 11 of 21 May 2018, Petitioner may have been eligible for earlier promotions to corporal and sergeant. Petitioner was promoted to E-2 on 8 August 2016 (AFADBD). Petitioner was promoted to E-3 on 1 May 2017. 8 months later, he would have been eligible for promotion to corporal. 12 months after his promotion to corporal, he would have been eligible for promotion to sergeant. Headquarters, U.S. Marine Corps (HQMC) will complete an audit of Petitioner’s records to determine if Petitioner’s composite scores would have met the cutting scores for promotion to corporal and sergeant. Furthermore, Defense Finance and Accounting Service (DFAS) will complete an audit of Petitioner’s records to determine if Petitioner is due any back pay and allowances if HQMC determines any date of rank adjustments for corporal or sergeant.

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.

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.

[REDACTED]

3/8/2021

Deputy Director