



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

█
Docket No. 4146-20
Ref: Signature Date

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

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

Ref: (a) Title 10 U.S.C. § 1552
(b) MCO 1754.11

Encl: (1) DD Form 149 w/enclosures
(2) Unit Punishment Book (UPB) Entry of 19 Nov 18
(3) Administrative Remarks (Page 11) 6105 counseling entry of 21 Nov 18
(4) Fitness report for the reporting period 8 Jan 18 to 20 Nov 18
(5) HQMC memo 1070 JPL 29 Jun 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 a 19 November 2018 unit punishment book (UPB) entry, a 21 November 2018 Administrative Remarks (page 11) 6105 counseling entry, and a fitness report covering the period 8 January 2018 to 20 November 2018 from his official military personnel file (OMPF).

2. The Board, consisting of █ 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. Petitioner was the subject of two Preliminary Inquiries based on allegations of sexual harassment and sexual assault and bottles of alcohol found onboard the █. Petitioner admitted to bringing an empty bottle onboard the █ and storing it in his footlocker. Petitioner accepted non-judicial punishment (NJP) and was charged with three specifications of violating Article 92, Uniform Code of Military Justice (UCMJ): possessing alcohol on a ship, introducing alcohol onto a ship, and fraternization with a corporal. As written

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in enclosure (2), the UPB entry documenting his 19 November 2018 NJP, Petitioner was found guilty of the first two specifications. In addition, Petitioner received enclosure (3), an Administrative Remarks page 11 on 21 November 2018, and enclosure (4) an adverse fitness report noting the NJP.

c. Petitioner alleges that he submitted a rebuttal to the page 11 on 28 November 2018, was told by the command to write another rebuttal; and that he did submit a second rebuttal in the allotted time but the rebuttal was not included in his record. Petitioner included a letter from his First Sergeant corroborating that Petitioner submitted the rebuttal on time. Petitioner also contends that his signature was forged on the UPB entry. Petitioner argues that his UPB entry, page 11, and adverse fitness report should be removed from his record due to the forged UPB entry and the improper processing of his page 11 rebuttal.

d. Enclosure (5), an advisory opinion (AO) furnished by Headquarters, Marine Corps (JPL), recommended to deny Petitioner's request to remove his UPB entry, page 11, and adverse fitness report but to add Petitioner's rebuttal to his OMPF.

CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the AO, the Board determined that Petitioner's request warrants partial relief. The Board found that Petitioner properly submitted a rebuttal to the page 11 that was not included in his record. The Board thus concluded that Petitioner's rebuttal shall be added to his OMPF.

However, in concurrence with the AO, the Board determined that there was no material error or injustice regarding the UPB entry, page 11, and fitness report. All three were factually correct and valid; the Commanding Officer had justification to counsel the Petitioner based on the guilty finding at NJP and to document the adverse incident in a fitness report. In addition, the Board found removal of the adverse material is not warranted as adding the rebuttal to Petitioner's OMPF corrects the error. The Board thus concluded that the UPB entry, page 11 entry, and fitness report shall remain in Petitioner's record.

RECOMMENDATION

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

Add Petitioner's rebuttal to Administrative Remarks page 11 entry of 21 Nov 18.

No further relief be granted.

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)),

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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] 6/3/2021

Executive Director
Signed by: [REDACTED]