



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

[REDACTED]
Docket No: 6405-20
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
XXX XX [REDACTED] USMCR (RET)

Ref: (a) Title 10 U.S.C. § 1552
(b) MCO P1070.12K (IRAM)
(c) MCO 1900.16 (MARCORSEPMAN)

Encl: (1) DD Form 149 w/enclosures
(2) Administrative remarks (Page 11) 6105 counseling entry of 25 Sep 18
(3) I-I, [REDACTED] ltr 1070 I-I of 15 Jan19

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 his 25 September 2020 Administrative Remarks (Page 11) 6105 counseling.

2. The Board, consisting of [REDACTED], [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 15 July 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 the 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. Petitioner was issued enclosure (2), a Page 11 6105 counseling him regarding his violation of Article 92, Uniform Code of Military Justice for dereliction in the performance of his duties. Specifically, he failed to report that his government issued laptop was lost. Although the Petitioner chose to submit written rebuttal, there is no rebuttal filed with the Page 11 in his official military personnel file, and there is no counter entry stating that his rebuttal was not received by his command.

c. Petitioner contends that the counseling is inaccurate because he did not fail to inform his command of the missing laptop. He also asserts that the counseling was issued prematurely and without all of the facts.

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d. Petitioner's Commanding Officer furnished enclosure (3), a request for the Page 11 he issued, be removed from Petitioner's official military personnel file (OMPF). The issuing officer noted that new information has surfaced and that he no longer believes Petitioner should be subject to the counseling.

e. References (b) and (c) provide commanders wide discretion regarding the subject-matter of a counseling, so long as a commanding officer has the necessary understanding of the facts and circumstances surrounding the subject matter of the counseling in order to exercise the judgment entrusted upon him or her.

CONCLUSION

Upon review and consideration of all the evidence of record, and in light of enclosure (3), the Board finds the existence of an error and injustice warranting relief. In this regard, the Board determined that exculpatory information surfaces after the Page 11 counseling was issued, and that it is therefore in error and unjust for the contested Page 11 counseling to remain in Petitioner's OMPF. The Board thus concluded that the contested Page 11 6105 counseling shall be removed from Petitioner's OMPF.

RECOMMENDATION

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

Petitioner's naval record be corrected by expunging enclosure (2), his 28 September 2018 Page 11 6105 counseling entry.

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.

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 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.

7/27/2021

[REDACTED]
Executive Director

Signed by: [REDACTED]