



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

[REDACTED]  
Docket No: 943-21  
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] USMC

Ref: (a) Title 10 U.S.C. § 1552  
(b) MCO 1900.16 (MARCORSEPMAN)  
(c) MCO 1070.12K W/CH 1 (IRAM)  
(d) MCO 5800.16—V15 (LSAM)

Encl: (1) DD Form 149 w/attachments  
(2) BCNR decision document of 10 Sep 20  
(3) NAVMC 118(11) Administrative Remarks (Page 11) of 26 Oct 18 and Rebuttal of 2 Nov 18  
(4) CO ltr of 16 Dec 20  
(5) Advisory Opinion by HQMC memo 1070 SEC of 10 Mar 21

1. Pursuant to the provisions of the reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting removal of his 26 October 2018 Administrative Remarks (Page 11) counseling entry and rebuttal.

2. The Board, consisting of three members reviewed Petitioner's allegations of error and injustice on 26 October 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 that, before applying to this Board, he exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board made the following findings:

a. On 26 October 2018, Petitioner was issued a Page 11 counseling entry pursuant to paragraph 6105 of reference (b). The entry counseled him for "an astonishing lack of sound decision making" appropriate for a commissioned officer, resulting in a loss of trust and confidence, and warned him that any further misconduct may result in processing for separation. Specifically, on 8 September 2018, Petitioner drove his privately owned vehicle (POV) to a range, then left for the night to sleep at home while his Marines remained in the field. Additionally, on 26 September 2018, Petitioner left the range by foot to his POV and went to his home to sleep while his platoon remained on the range overnight. The entry also noted that

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

Petitioner was relieved for cause. In his rebuttal, Petitioner took full responsibility for his mistakes that led to the issuance of the formal counseling, and noted that “[his] wife and youngest daughter are part of the Exception[al] Family Member Program” and that he “felt it necessary at the time to go home to aide [his] wife.”

b. On 18 August 2020, the Board noted that Petitioner was issued the 6105 counseling entry in error because counseling entries issued pursuant to paragraph 6105 of reference (b) provides, in part, written notice to *enlisted Marines* (emphasis added) that failure to successfully take the recommended corrective action may result in processing for administrative separation. The Board, however determined that the entry accurately documented Petitioner’s misconduct, provided a detailed description of his substandard performance, and he was afforded the opportunity to submit a statement. The Board thus concluded that partial corrective action was warranted by redacting only the verbiage specific to 6105 counseling entries, and that the redacted Page 11 counseling, now in compliance with reference (c), shall remain in Petitioner’s official military personnel file (OMPF). See enclosures (2) and (3).

c. Petitioner asserts that he discussed, with his then-Commanding Officer (CO), the partial corrective action taken by the Board, and that another officer who was relieved for cause and received a similar Page 11 entry received an advisory opinion (AO) to remove his Page 11 counseling entry. Petitioner also argues that while their incidents differ to a degree, they both accepted responsibility for their actions and the actions were incorrectly documented in 6105 counseling entries by their respective COs. Petitioner thus contends that his Page 11 entry, as modified by the Board, is still not in compliance with reference (c) and that the Page 11 entry should have been entered as an enclosure with a Report of Misconduct (ROM).

d. Petitioner’s then-CO, who issued the 6105 counseling, noted the 18 August 2020 Board’s conclusion and determined that her issuance of the 6105 counseling was an incorrect administrative remedy for addressing Petitioner’s deficiencies. Petitioner’s CO also noted that Petitioner continued to work hard and that she eventually again appointed Petitioner as a platoon commander and later a company executive officer. Petitioner’s CO submitted a recommendation to Headquarters, Marine Corps (MMRP-13) for removal of a fitness report that cites the 6105 counseling she issued, which she views as no longer a valid form of derogatory material. See enclosure (4).

e. The AO, furnished by Headquarters Marine Corps recommended denying Petitioner’s request to remove his Page 11 counseling entry. The AO noted that the Page 11 entry documented Petitioner’s violation of Article 92 and 86 of the Uniform Code of Military Justice, and opined that Petitioner’s reference to a similar request in which the Board decided to remove another officer’s Page 11 entry lacks merit, because the Board considers each case on its own unique circumstances and merits. The AO concluded that the Page 11 entry, as modified by the Board, is written in accordance with reference (c) and should remain on file. See enclosure (5).

f. Reference (d) provides that, pursuant to paragraph 3005 of reference (c), officers may receive a Page 11 entry for misconduct or substandard performance of duty. The entry shall note that the counseling is pursuant to paragraph 3005 of the IRAM, not paragraph 6105 of the MARCORSEPMAN, *which applies only to enlisted Marines* (emphasis added). The officer will

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

acknowledge the adverse counseling and be provided with an opportunity to submit a rebuttal. The entry shall be included as an enclosure to a Report of Misconduct. The Commandant of the Marine Corps (JPL) will forward the adverse matters for inclusion in the officer's OMPF.

#### MAJORITY CONCLUSION

Upon review and consideration of all the evidence of record, the majority found the existence of an injustice warranting corrective action. In this regard, the majority carefully considered Petitioner's statement and correspondence from his then-CO, the officer who issued the contested Page 11 counseling. The Board noted that Petitioner left the range due to family issues and that he acknowledged he was not clear about the regulations for POVs and remaining on the range overnight. The Board also noted that based upon the CO's statement, Petitioner has since demonstrated continuous improvement in the performance of his duties, he was again appointed as platoon commander, and he was subsequently assigned as the company executive officer. The majority took into consideration that Petitioner was a second lieutenant at the time of his misconduct, that the 6105 counseling was improper and in violation of reference (b) through (d), when issued. Moreover, the majority found Petitioner's rebuttal statement credible and that his reasons for leaving the range influenced his decision making. The majority, thus concluded that Petitioner's Page 11 entry shall be removed from his OMPF.

#### MAJORITY RECOMMENDATION

In view of the above, the majority members recommend the following corrective action.

Petitioner's naval record be corrected by removing enclosure (3), his 26 October 2018 Page 11 counseling entry and 2 November 2018 rebuttal.

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.

#### MINORITY CONCLUSION

Upon review and consideration of all the evidence of record, the minority found the evidence insufficient to warrant corrective action beyond that already taken by the 18 August 2020 Board. In this regard, the minority substantially concurred with the AO that Petitioner's Page 11 entry is valid and should be retained. The minority also substantially concurred with the previous Board's determination that although Petitioner's Page 11 was flawed, the entry documented Petitioner's misconduct and is currently written in accordance with applicable policy guidance. The minority noted that Petitioner's then-CO admits that she found it necessary to document Petitioner's misconduct and at that time, and that the 6105 counseling seemed to be the appropriate administrative measure. The minority determined that although the 6105 was not the appropriate format, Petitioner's CO clearly determined that his misconduct and relief for cause were matters significant to document in his permanent record and that his relief for cause is a matter of record. Moreover, the minority noted that while reference (d) provides that Page 11

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

entries shall be included as an enclosure to a Report of Misconduct, it does not prohibit the inclusion of a valid Page 11 counseling entry into an officer's OMPF absent the submission of a ROM. The minority concluded that Petitioner's page 11 entry is valid and shall remain on file as modified.

MINORITY RECOMMENDATION

No changes to Petitioner record.

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

11/29/2021

[REDACTED]

Executive Director

From: Assistant General Counsel (Manpower and Reserve Affairs)

Reviewed and Approved Majority Recommendation (Grant Relief)

Reviewed and Approved Minority and Advisory Opinion Recommendation (Deny Relief)

12/13/2021

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]