



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

█  
Docket No. 1362-21  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █  
█ USMC

Ref: (a) Title 10 U.S.C. § 1552  
(b) Uniform Code of Military Justice, 2019  
(c) MCO P1070.12K (IRAM)

Encl: (1) DD Form 149 w/enclosures  
(2) Unit Punishment Book entry 29 Mar19  
(3) Administrative Remarks (6105) counseling entry 29 Mar 19  
(4) Administrative Remarks (6105) counseling entry 29 Mar 19  
(5) Administrative Remarks (6105) counseling entry undated  
(6) Administrative Separation Board Findings 22 Jan 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 all documentation of being charged for violation of Article 112a of reference (b), from his official military personnel file (OMPF) as well as removing his 18 month promotion restriction, reduction in rank, and mandatory gun counseling requirement.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 12 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 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 underwent non-judicial punishment (NJP) on 29 March 2019 for violations of Articles 112a (Wrongful use, possession of a controlled substance), 128 (Assault), and 92 (Failure to obey order or regulation) of reference (b), enclosure (2). Enclosure (3) states that on 18 February 2019, Petitioner tested positive for a controlled substance during a Squadron Urinalysis test, and on 24 February 2019, Petitioner assaulted an incapacitated Marine, posted a video on social media that was inappropriate towards an individual and the Marine Corps, and

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

knowingly consumed alcohol under the age of 21. As punishment, Petitioner received reduction in rank to Private First Class, forfeiture of pay, restriction to the limits of place of mess, billet, duty, and worship and most direct route to and from without suspension for 45 days, and extra duty. Petitioner received two Page 11 6105 counseling entries on 29 March 2019; enclosure (3) documents the NJP and enclosure (4) states that Petitioner was eligible but not recommended for promotion to lance corporal for 18 months due to the recent NJP.

c. Petitioner received a third Page 11 6105 counseling entry, undated, enclosure (5), stating that he was eligible but not recommended for promotion to Private First Class due to his pending Administrative Separation. On 22 January 2020, an administrative discharge board (ADB) convened and found that Petitioner committed commission of a serious offense, assault, and recommended Petitioner be retained in the Marine Corps, enclosure (6).

d. Petitioner argues that he was unaware that he could not accept NJP and that since the ADB found that he only violated Article 128 of reference (b) the Page 11 entries and unit punishment book (UPB) entry documenting the Article 112a and Article 92 charges are erroneous and unjust. Petitioner further contends that the mandatory gun counseling and reduction in rank that he received as a result of the NJP are in turn invalid.

## CONCLUSION

Upon review and consideration of all the evidence of record, the Board determined that Petitioner's request warrants partial relief. The Board noted that enclosure (5) contains an administrative error, in violation of reference (c), as it is undated. The Board further noted that the Page 11 entry concerns administrative discharge and the ADB did not find separation. Consequently, the Board found enclosure (5) erroneous and concluded that enclosure (5) shall be removed from Petitioner's record.

The Board however, determined that removal of the UPB and Page 11 entries of 29 March 2019 would constitute an excessive degree of redress. The Board noted that these entries documented that Petitioner's commanding officer (CO), found, based on the evidence, that Petitioner committed violations of Article 112a and 92 of reference (b). The Board found that the decision of the ADB does not invalidate the CO's finding and that there was insufficient evidence that the Petitioner was unaware that he could refuse the NJP. Consequently, the Board determined there was no material error or injustice with regard to enclosures (2), (3), and (4).

## RECOMMENDATION

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

Petitioner's naval record be corrected by removing enclosure (5), his undated 6105 counseling entry.

That no further relief be granted.

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

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.

11/8/2021

[REDACTED]  
Executive Director  
[REDACTED]