



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

[REDACTED]
Docket No: 2798-21
Ref: Signature Date

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

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

Ref: (a) Title 10 U.S.C. § 1552
(b) MCO 1610.7A (PES Manual)

Encl: (1) DD Form 149 w/enclosures
(2) Administrative Remarks (Page 11) 6105 counseling entry of 15 Feb 17
(3) Administrative Remarks (Page 11) 6105 counseling entry of 14 Sep 18

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 four Administrative Remarks (Page 11) 6105 counseling entries.

2. Although his application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider his application on its merits. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 21 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 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 a Page 11 6105 on 15 February 2017, counseling him for a positive urinalysis for lorazepam, which he did not have a prescription for. On 23 January 2017, this incident was declared "not wrongful use." Petitioner acknowledged the entry and chose not to submit a written rebuttal. Enclosure (2).

c. Petitioner contends that since the ingestion of the prescription drug was not considered wrongful use, the 6105 counseling should not be used against him as he is no longer subject to random urinalyses. Petitioner asserts that the counseling is prejudicial to his future employment opportunities because he is subject to background investigations.

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d. Petitioner was issued a Page 11 6105 on 14 September 2018, counseling him concerning his assignment to the U.S. Marine Corps Body Composition Program (BCP). The entry appears three times in his official military personnel file (OMPF). Enclosure (3).

e. Petitioner contends that assignment to the BCP was removed from his official training record due to unit level policy violations in the weigh-in process. Petitioner asserts that he was never supposed to be assigned to the program and the entries were to be removed when his basic training record was updated.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an error and injustice warranting partial relief. In this regard, the Board determined that there was no error in issuing the Petitioner his 15 February 2017 6105 counseling entry as his Commanding Officer had authority to do so based on the facts and circumstances at the time. The Board noted that the evidence of record supports the matters of the 6105 counseling entry and should not be removed from Petitioner's OMPF. The Board further noted that the Petitioner did not provide an endorsement from the Commanding Officer in support of this request.

The Board determined that there was an error in issuing Petitioner his 14 September 2018 6105 counseling entry. The Board considered Petitioner's submission of fitness reports prior to and during the reporting period for which he was issued this counseling entry assigning him to BCP. The Board noted that reference (b) requires fitness reports to be submitted due to performance-based adversity and the report must be marked "adverse." The Board further noted Petitioner was not issued an adverse report after being issued the counseling entry. The fitness reports provided in the Petitioner's application indicates he was not assigned to the BCP, that he was on limited duty medical status from June 2017 until his retirement, and the medications provided to him caused an increase in body weight. The Board therefore deemed the entry invalid. The Board concluded that the contested Page 11, and duplicate entries, 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 removing enclosure (3), his 14 September 2018 Page 11 6105 counseling entry, to include duplicate copies of the 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.

No further relief be granted.

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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.

11/6/2021

