



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

[REDACTED]
Docket No: 3207-21
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 1070.12K (IRAM)
(c) MCO 1900.16 (MARCORSEPMAN)
(d) MCO 1610.7A (PES Manual)
(e) JAGINST 5800.7F (JAGMAN)

Encl: (1) DD Form 149 w/enclosures
(2) State of [REDACTED] Register of Actions filed 12 Feb 18
(3) Unit Punishment Book (UPB) of 9 Aug 19
(4) Administrative Remarks (Page 11) 6105 counseling entry of 9 Aug 19 and promotion-restriction counseling of 9 Aug 19
(5) Fitness Report for the reporting period 1 Jul 19 to 9 Aug 19
(6) MRO Statement of 8 Jan 20
(7) Third Officer Sighter statement of 12 Feb 20
(8) Advisory Opinion of 28 Oct 21
(9) CO, [REDACTED] letter of 8 May 21

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 to remove his Unit Punishment Book of 9 August 2019, Administrative Remarks (Page 11) 6105 counseling entry of 9 August 2019, and Fitness Report (Fitrep) for the reporting period of 1 July 2019 to 9 August 2019. Enclosures (3) through (5).

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 2 December 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. On 11 February 2018, Petitioner was arrested in [REDACTED] for operating a motor vehicle under the influence of alcohol. On 21 March 2018, Petitioner was convicted in

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

court for driving under the influence of alcohol and sentenced to probation. On 23 March 2019, Petitioner's case was dismissed by the [REDACTED] after completing probation. See enclosure (2).

c. On 9 August 2019, while at a subsequent command, the Petitioner received non-judicial punishment (NJP) for failing to obey an order or regulation by wrongfully driving while under the influence of alcohol, and for drunken operation of a vehicle by operating a motor vehicle while driving under the influence of alcohol. Petitioner was awarded forfeitures of pay for two months, which was suspended for twelve months. Petitioner was subsequently issued a Page 11 6105 counseling entry and a promotion-restriction counseling in accordance with references (b) and (c). See enclosures (3) and (4), respectively.

d. Petitioner was issued enclosure (5), a not-observed Fitrep for the reporting period 1 July 2019 to 9 August 2019. The Fitrep was marked adverse as a result of disciplinary action due to Petitioner's NJP. Petitioner accepted responsibility for his actions in his rebuttal statement made in response to the adverse matters documented in the Fitrep. Enclosure (6). The Third Officer Sighter reviewed the Fitrep pursuant to reference (d) and determined there were no factual differences to adjudicate. See enclosure (7).

e. Petitioner contends his Commanding Officer (CO) did not comply with reference (e) when he imposed the 9 August 2019 NJP. He further contends that the NJP is administratively invalid and unfairly prejudicial, and should be removed from his record.

f. Enclosure (8), the advisory opinion (AO), furnished by the Headquarters Marine Corps Military Personnel Law Branch (JPL), noted that per reference (d), a person in the Naval Service, who has been tried in a state or foreign court, whether convicted or acquitted, shall not have military charges drawn against him or her and not be referred to a court-martial or be the subject of NJP for the same act without the proper permission of the first General Court-Martial Convening Authority (GCMCA) over the member. In consideration of all the evidence, JPL determined that the CO, Recruiting Station [REDACTED], did not receive GCMCA approval prior to imposing NJP, and recommended the NJP and corresponding Page 11 6105 counseling entry be removed from Petitioner's official military personnel file (OMPF) as the NJP is invalid. JPL opined that because the NJP is not valid, phrases that reference the NJP in Section I of the contested Fitrep should be removed; however, the adverse Fitrep should remain as required per reference (d).

CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the JPL AO, the Board finds the existence of an error and injustice warranting partial relief.

In this regard, the Board determined that there was an error in issuing the Petitioner NJP on 9 August 2019, and subsequently issuing the Page 11 6105 counseling entry and promotion-restriction entry. The Board considered enclosure (9), the Recruiting Station CO's letter acknowledging that he was not aware of the requirement under reference (e) prior to imposing NJP. The Board substantially concurred with the AO, and therefore, deemed the NJP and 9

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

August 2019 counseling entries invalid. The Board concluded that the NJP and contested Page 11 entries shall be removed from Petitioner's OMPF.

With regard to Petitioner's contested Fitrep, the Board concurred with the AO that phrases in Section I comments that reference the NJP should be removed. The Board, however, was not willing to remove the Fitrep, noting Petitioner has not exhausted all available remedies to remove the Fitrep by first petitioning the Headquarters Marine Corps Performance Evaluation Review Board.

RECOMMENDATION

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

Petitioner's naval record be corrected by removing enclosure (3), his 9 August 2019 UPB.

Petitioner's naval record be corrected by removing enclosure (4), his Page 11 with the 9 August 2019 6105 and promotion-restriction counseling entries.

Petitioner's naval record be corrected by redacting the following comments in Section I of enclosure (5), his Fitrep for the reporting period 1 July 2019 to 9 August 2019:

“[t]he reporting occasion for this DC report is due to non-judicial punishment.” and
“. . . MRO was found guilty at NJP of violating Articles 92 of the UCMJ.”

That 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.

That 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 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.

12/17/2021

[REDACTED]
Deputy Director
[REDACTED]