



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

██████████
Docket No: 3766-21
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████
XXX XX ██████████ USMC

Ref: (a) Title 10 U.S.C. § 1552
(b) MCO 1070/12K (IRAM)

Encl: (1) DD Form 149 w/enclosures
(2) NCIS ROI of 31 May 19
(3) Administrative Remarks (Page 11) entry of 31 May 19
(4) Administrative Remarks (Page 11) entry of 14 Jun 19
(5) Administrative Remarks (Page 11) entry of 12 Sep 19
(6) Administrative Remarks (Page 11) entry of 11 Dec 19
(7) Administrative Remarks (Page 11) entry of 13 Mar 20
(8) Administrative Remarks (Page 11) entry of 1 May 20
(9) Administrative Remarks (Page 11) entry of 9 Jul 20
(10) Administrative Remarks (Page 11) entry of 30 Jul 20
(11) Administrative Remarks (Page 11) 6015 counseling entry of 10 Sep 20
(12) CO, ██████████ ltr 1900 CO of 8 Sep 20
(13) ADB Report of 2 Feb 21
(14) CO, ██████████ FIRST ENDORSEMENT 1910 CO of 4 Feb 21
(15) NCIS ROI of 22 Mar 21
(16) Comdr, ██████████ MAW SECOND ENDORSEMENT 1910 Legal of 29 Apr 21
(17) CO, MWSS ██████████ ltr 1400 CO of 7 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 eight Administrative Remarks (Page 11) entries and one 6105 counseling entry. Enclosures (3) through (11).

2. The Board, consisting of ██████████, ██████████ and ██████████, reviewed Petitioner's allegations of error and injustice on 23 November 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.

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b. In May 2019, Petitioner was attached to [REDACTED]. [REDACTED] Petitioner's unit was acting in support of the protection of the [REDACTED] border, and Petitioner was assigned to a surveillance billet as a sentry. Petitioner alleges "Spanish-speaking" males opened the door to his vehicle and attempted to extract him from the vehicle. Petitioner alleges he withdrew his military issued service pistol and discharged one round during the struggle. Upon the discharge, Petitioner alleges the assailants immediately fled, he called for assistance and waited for agents arrived on scene. Upon searching the area, the agents were unable to track the assailants or locate any trace of footprints or vehicle tire tracks. See enclosure (2).

c. On 31 May 2019, the Naval Criminal Investigative Service (NCIS) initiated an investigation into suspected violations of Article 107 (False Official Statements), Article 95 (Offenses by a Sentinel or Lookout), and Article 134 (Firearm Discharge), of the Uniform Code Military Justice (UCMJ). See enclosure (2).

d. From 31 May 2019 to 10 September 2020, Petitioner received eight Page 11 will not promote/promotion restriction entries and one 6105 counseling for his administrative separation processing. See enclosures (3) through (11).

e. On 8 September 2020, Petitioner was notified of pending administrative separation proceedings for commission of a serious offense and, on 14 September 2020, he acknowledged his rights, consulted with counsel, and requested a hearing before an administrative discharge board (ADB). See enclosure (12).

f. On 2 February 2021, an ADB was held and, by a majority vote, the board members determined that the preponderance of the evidence did not prove any of the acts or omissions alleged and recommended retention. See enclosure (13).

g. On 4 February 2021, the Commanding Officer (CO), Marine Aircraft Group [REDACTED] disagreed with the finding and recommendation of the ADB; however, conceded after consulting with the command Staff Judge Advocate. See enclosure (14).

h. On 22 March 2021, NCIS closed its investigation after being informed Petitioner was retained and no charges were being pursued. See enclosure (15).

i. On 29 April 2021, the Commander, [REDACTED] also disagreed with the finding and recommendation of the ADB and opined that he was "convinced that their conclusions were clearly contrary to the substantial weight of the evidence of the record" and that he "concur[s] that further pursuit of separation would not be a good use of resources." The CG subsequently approved the Board's finding and recommendation. See enclosure (16).

j. On 7 May 2021, the CO [REDACTED] requested Petitioner's remedial promotion to the grade of lance corporal to the Commandant of the Marine Corps [REDACTED] effective 1 June 2019. See enclosure (17).

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CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an error and injustice warranting relief. In this regard, the Board determined that Petitioner submitted sufficient evidence to support his contentions, and that the evidence of record does not support the matters of the Page 11 promotion restriction entries and 6105 counseling entry.

The Board noted that per reference (b), Page 11 entries should not be issued concerning administrative discharge proceedings that do not, upon final review, result in discharge. Moreover, the Board noted that Petitioner was promoted to the grade of lance corporal with a 1 June 2019 effective date of rank. The Board therefore, deemed the entries invalid. The Board concluded that the contested Page 11 promotion restriction entries and 6105 counseling entry shall be removed from Petitioner's official military personnel file.

RECOMMENDATION

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

Petitioner's naval record be corrected by removing enclosures (3) through (11), his 31 May 2019, 14 June 2019, 12 September 2019, 11 December 2019, 13 March 2020, 1 May 2020, 9 July 2020, and 30 July 2020 Page 11 promotion restriction entries, and 10 September 2020 6105 counseling entry, and any duplicate entries related to non-recommended for promotion due to pending legal action.

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.

12/16/2021

[REDACTED]
Deputy Director
[REDACTED]