



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

█  
Docket No: 3928-21  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █, USNR,  
█

Ref: (a) Title 10 U.S.C. § 1552

Encl: (1) DD Form 149 w/attachments  
(2) BUPERS Order 1326 PERS-4012 of 10 Apr 19  
(3) Fitness report for the reporting period 16 Sep 19 to 15 Sep 20  
(4) Navy-Marine Corps Trial Judiciary Central Judicial Circuit Defense  
Motion of 5 Jan 21  
(5) NSIPS UA entry for the period 24 Oct 19 to 30 Oct 19  
(6) Office of Legal Counsel (PERS-00J) of 9 Sep 21  
(7) NPC ltr 1000 PERS-313 of 28 Sep 21

1. Pursuant to the provisions of the reference, 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 the unauthorized absence (UA) entry for the period 24 October 2019 to 30 October 2019 from his Navy Standard Integrated Personnel System (NSIPS) record.

2. The Board, consisting of █, █, and █ reviewed Petitioner's allegations of error and injustice on 18 January 2022 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 4 October 2019, in accordance with Bureau of Naval Personnel (BUPERS) Orders, Petitioner was detached from his command, Helicopter Mine Countermeasures Squadron █  
█ in transit to the █, █, █.  
See enclosure (2).

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[REDACTED]

b. According to Petitioner's fitness report for the reporting period 16 September 2019 to 15 September 2020, on 22 October 2019, Petitioner was found guilty of Driving While Intoxicated (DWI) by the [REDACTED] General District Court. See enclosure (3).

c. On 5 January 2021, through counsel, Petitioner filed a Defense Motion to Dismiss Charges with the Navy-Marine Corps Trial Judiciary Central Judicial Court. In his Motion, Petitioner's counsel noted that on 23 October 2019, Petitioner received a text message from the Command Master Chief (CMDMC) of [REDACTED]. The CMDMC informed Petitioner that his chain of command believed that Petitioner failed to report a DWI and directed Petitioner to return to [REDACTED] on 24 October 2019 and not to execute orders. Petitioner's counsel argued that the CMDMC did not possess the authority to issue the order for Petitioner to return to [REDACTED]. See enclosure (4).

d. On 5 November 2019, a NSIPS entry was made noting that Petitioner was in an unauthorized absence (UA) status from [REDACTED] on 0830, 24 October 2019 and surrendered on board at 1700, 30 October 2019. See enclosure (5).

e. The advisory opinion (AO) furnished by PERS-00J determined that Petitioner had not met his burden to overcome the presumption of regularity attached to the official actions of the Navy. The AO noted that Petitioner did not provide evidence showing a material error or injustice and he did not provided evidence of the existence of the six days of UA in his record. See enclosure (6).

f. The AO furnished by PERS-313 noted that a review of Petitioner's official record found no documents to support the referenced UA. See enclosure (7).

g. Petitioner contends that the UA entry is unlawful, he was recalled to his parent command after being detached and was traveling to his next duty assignment. He claimed that, on 18 February 2021, after an Article 39(a) Uniform Code of Military Justice hearing, the military judge ruled that the order to return to the command by the CMDMC was not lawful.

## CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting corrective action. The Board noted that according to the AOs, Petitioner's record did not contain any documentation to support the NSIPS UA entry. The Board also noted the Defense Motion to Dismiss Charges and Petitioner's claim that the military judge ruled that the CMDMC's order to return to the command was not lawful. The Board determined that Petitioner's claim regarding the military judge's ruling was not supported by evidence; however, the Board found no evidence of judicial or administrative action related to the UA allegation in Petitioner's record. They noted, too, that Petitioner's Pay Entry Base Date and Armed Forces Service Date were adjusted to reflect six days of time lost. Accordingly, the Board determined that there was an insufficient basis for Petitioner's chain of command to conclude that he was UA and Petitioner's period of UA is not supported by any official documentation. Accordingly, the Board determined that all NSIPS entries related to Petitioner's period of UA from 24 October 2019 to 30 October 2019 should be removed. The Board also determined that an audit by the

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[REDACTED]

Defense Finance and Accounting Service (DFAS) should be conducted to correct an errors in Petitioner's record that are related to the erroneous UA entry.

#### RECOMMENDATION

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

Petitioner's naval record be corrected by updating Petitioner's NSIPS record by: (1) removing the UA entries; (2) changing the Charge Lost Time entry to '0'; and (3) removing the remark "MBR UA FROM HM-15 ON 0830, 24OCT19 AND SURR ONBD 1700, 30OCT19. RESTORED TO FULL DUTY STATUS 1700, 30OCT19."

DFAS audit Petitioner's record to correct any changes that occurred as a result of the erroneous NSIPS entry/period of UA from 24 October 2019 to 30 October 2019.

Additionally, Petitioner's Pay Entry Base Date and Armed Forces Service Date shall be audited for correction.

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.

2/7/2022

[REDACTED]

Deputy Director

[REDACTED]