



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



Docket No: 4508-21  
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) 10 U.S.C. § 1552  
(b) MCO P1070.12K (IRAM)

Encl: (1) DD Form 149 w/enclosures  
(2) Administrative Remarks (Page 11) counseling entry of 22 Feb 20  
(3) Administrative Remarks (Page 11) counseling entry of 18 Jul 20  
(4) Administrative Remarks (Page 11) counseling entry of 3 Aug 20  
(5) Notification of Separation Proceedings of 31 Jul 20  
(6) Administrative Discharge Board Report of 28 Feb 21  
(7) Counsel for Respondent ltr of 28 Feb 21  
(8) Statement of [REDACTED] (undated)

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 his naval record be corrected by removing "all adverse entries (2/22/2020, 07/18/2020, and 08/03/2020) submitted to the Administrative Separation Board" at enclosures (2) through (4).

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 27 January 2022, and pursuant to its regulations, determined 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. On 22 February 2020, Petitioner was issued a Page 11 entry counseling him for failure to obey a lawful general order by wrongfully failing to have his female guest check in with the barracks duty. See Enclosure (2).

c. On 18 July 2020, Petitioner was issued a Page 11 entry counseling him after he was apprehended while operating a motor vehicle under the influence of alcohol. See Enclosure (3).

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d. On 31 July 2020, Petitioner was notified of pending administrative separation action by reason of misconduct due to pattern of misconduct. See Enclosure (5).

e. On 3 August 2020, Petitioner was issued a Page 11 entry stating he was eligible but not recommended for promotion to the rank of corporal for a period of 12 months due to pending administrative separation. See Enclosure (4).

f. On 28 February 2021, an Administrative Discharge Board (ADB) determined by a majority vote that the preponderance of the evidence did not prove any of the acts or omissions alleged in the administrative separation notification and recommended retention. See Enclosure (5).

g. Petitioner's Official Military Personnel File (OMPF) contains a letter from Petitioner's counsel informing Petitioner that his representation will automatically terminate when the separation authority closes the case. See Enclosure (7). A written statement by Petitioner, enclosure (8), is also contained in Petitioner's OMPF.

h. Petitioner contends enclosures (2) through (4) should be removed because the members of the ADB concluded he had been "falsely accused" and advised him that his "next course of action should be to have the negative entries regarding these charges of misconduct" removed from his OMPF. He further contends these negative entries have prevented him from being recommended for promotion.

i. Reference (b) does not authorize Page 11 entries which concern administrative discharge proceedings if the proceedings, upon final review, do not result in discharge.

## CONCLUSION

Upon review and consideration of all the evidence, the Board concluded Petitioner's request warrants partial relief. In this regard, the Board determined the counseling entries at enclosures (2) and (3), which meet the requirements of reference (b), create permanent records of matters Petitioner's commanding officer deemed significant enough to document and concluded there was insufficient evidence of an error or injustice warranting removal. The Board noted the administrative separation process is not intended as, nor does it function as, a method to overturn or invalidate other procedures or administrative actions. It is conceivable and permissible that the administrative separation and counseling processes, which have separate considerations and purposes, may arrive at different findings. The Board concluded the ADB's determination does not impact the validity of the Page 11 counseling entries at enclosures (2) and (3).

However, the Board, noting the counseling entry at enclosure (4) stated Petitioner was being processed for administrative separation but that he was ultimately retained, determined the statement regarding administrative separation processing was not in compliance with reference (b). The Board concluded it was in the interest of justice to remove the Page 11 entry at enclosure (4) dated 3 August 2020.

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The Board further determined it was error for enclosures (5) through (8) to remain in Petitioner's OMPF because these documents pertain to Petitioner's administrative separation processing which resulted in retention.

#### RECOMMENDATION

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

Petitioner's naval record be corrected by removing the following documents at enclosures (4) through (8):

Administrative Remarks (Page 11) counseling entry of 3 August 2020 (Enclosure (4))  
Notification of Separation Proceedings of 31 July 2020 (Enclosure (5))  
Administrative Discharge Board Report of 28 February 2021 (Enclosure (6))  
Counsel for Respondent letter of 28 February 2021 (Enclosure (7))  
Statement of [REDACTED] (undated) (Enclosure (8))

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.

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.

2/23/2022

[REDACTED]  
Executive Director  
[REDACTED]