



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

█ P  
Docket No: 5083-21  
Ref: Signature Date

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

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

Ref: (a) Title 10 U.S.C. § 1552

Encl: (1) DD Form 149 w/enclosures  
(2) Administrative Remarks (Page 11) 6105 counseling entry of 1 Apr 19  
(3) Administrative Remarks (Page 11) 6105 counseling entry of 6 May 19  
(4) Administrative Remarks (Page 11) counseling entries of 13 May 19  
(5) CO, █ ltr 5800 CO of 19 Dec 19  
(6) HQMC memo 1070 JPL of 8 Sep 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 his naval record be corrected by removing Administrative Remarks (Page 11) 6105 counseling entries associated with his 2019 nonjudicial punishment (NJP) that was set aside on 19 December 2019.

2. The Board, consisting of █ and █ reviewed Petitioner's allegations of error and injustice on 16 September 2021, 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 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 1 April 2019 and 6 May 2019, Petitioner was issued Page 11 6105 entries counseling him because he was not recommended for promotion due to pending legal action for underage drinking. Petitioner acknowledged the entries and elected not to submit a written rebuttal. Enclosures (2) and (3).

c. On 13 May 2019, Petitioner received NJP and a corresponding Page 11 6105 counseling entry. Petitioner acknowledged the entry and elected not to submit a written rebuttal. On the same day, Petitioner received a Page 11 counseling, notifying him that he was not eligible for promotion due to his NJP. Enclosure (4).

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d. On 19 December 2019, after the Commanding Officer (CO) who administered the 13 May 2019 NJP was relieved for cause. Subsequently, the successor in command conducted a legal review of Petitioner's NJP, with guidance from the cognizant staff judge advocate, and concluded the NJP was unjust and disproportionate. The new CO set aside the NJP and restored Petitioner's rights, privileges, and property affected by the punishment. Enclosure (5).

e. Petitioner contends enclosures (2) through (4) should be removed from his Official Military Personnel File (OMPF) because the legal action they reference was adjudicated at a NJP that was set aside due to being unjust and disproportionate.

f. The Advisory Opinion (AO) at enclosure (6) recommends granting Petitioner's requested relief. The AO states Petitioner has provided substantial evidence demonstrating the existence of a probably material error or injustice that warrants the removal of the counseling entries.

#### CONCLUSION

Upon review and consideration of all the evidence of record, the Board determined Petitioner's request warrants relief. The Board, relying on the AO, determined it was in the interest of justice to remove the Page 11 entries at enclosures (2) through (4)..

#### RECOMMENDATION

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

Petitioner's naval record be corrected by removing the 1 April 2019, 6 May 2019, and 13 May 2019 Page 11 counseling entries at enclosures (2) through (4).

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.

10/5/2021

[REDACTED]  
Executive Director

Signed by [REDACTED]