



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

██████████
Docket No: 5157-21
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 1554.11A (FAP Policy)
(c) MCO 1070/12K (IRAM)
(d) MCO 1900.16 (MARCORSEPMAN)

Encl: (1) DD Form 149 w/enclosures
(2) Administrative Remarks (Page 11) 6105 counseling entry of 17 Dec 19
(3) Petitioner rebuttal of 20 Dec 20
(4) Petitioner statement (undated)
(5) Petitioner spouse statement (undated)
(6) Administrative Remarks (Page 11) entry of 24 Jul 19
(7) HQMC memo 1070 JPL of 17 Oct 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 by removing his Administrative Remarks (Page 11) 6105 counseling entry of 17 December 2019, associated rebuttal of 20 December 2019, and undated statements from the Petitioner and his spouse, enclosures (2) through (5). Although the Petitioner did not request removal of his Page 11 entry of 24 July 2019, the Board considered the entry as it was derogatory material associated with the petition. See enclosure (6).

2. The Board, consisting of ██████████, ██████████, and ██████████ reviewed Petitioner's allegations of error and injustice on 28 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 24 July 2019, Petitioner was issued a Page 11 entry after the Incident Determination Committee (IDC) determined that on 23 July 2019, an allegation of child abuse against the Petitioner met the criteria for entry into the Department of Defense Central Registry Database.

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c. On 17 December 2019, Petitioner was issued enclosure (2), a Page 11 6105 counseling entry for violation of Article 128 of the Uniform Code of Military Justice (UCMJ). Specifically, that on 23 September 2019, a Criminal Investigation Division investigation substantiated allegations that Petitioner spanked his five-year old daughter with a belt that resulted in a four inch long bruise on the right back side of her upper thigh, lasting for multiple days. Petitioner acknowledged and signed the entry. Petitioner rebutted the counseling and denied the allegation. He explained that his daughter got the bruise due to an accident while she was riding her bike. Enclosure (3). Petitioner and his spouse submitted additional statements, stating the same. Enclosures (4) and (5).

d. Petitioner contends that the contested Page 11 6105 counseling entry inappropriately relied on the findings of the IDC meeting and since he was never charged, this entry should be removed. Petitioner asserts his chain of command did not include enclosed documents submitted with his rebuttal to the counseling, to include personal awards and a fitness report. Enclosure (1). Petitioner also cites the improper use of a violation of Article 128, UCMJ, as his daughter was questioned about the marks and at no point did she state they were caused by the Petitioner. Petitioner also cites Chapter 5 of reference (b), in that an IDC meeting is not a disciplinary proceeding and requirements for due process are not applicable to IDC meetings and actions.

e. Enclosure (7), the advisory opinion (AO), furnished by the Military Personnel Law Branch (JPL), noted that an Incident Status Determination (ISD) cannot be the sole basis for an administrative action and determined that the Page 11 entry of 24 July 2019 was issued in error. The AO further noted that the contested Page 11 6105 counseling entry of 17 December 2019 references a CID investigation which substantiated assault, and one which the commanding officer (CO) relied upon independent of the ISD. As such, Petitioner failed to provide substantial evidence that the investigation was erroneous. Furthermore, the Petitioner failed to demonstrate the exclusion of his enclosures to his rebuttal created a material error or injustice in his record, because those documents are already in his official military personnel file (OMPF). The AO determined that the contested Page 11 6105 counseling entry was administered properly and recommends that the remain in his OMPF.

CONCLUSION

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

In this regard, the Board determined that there was an error in issuing Petitioner the 24 July 2019 Page 11 entry as it did not comply with the requirements contained within references (b) and (c). The Board concurred with the AO, and concluded that the 24 July 2019 Page 11 entry shall be removed from Petitioner's OMPF.

The Board also concurred with the AO and determined that there was no error in issuing the Petitioner the contested 17 December 2019 Page 11 6105 counseling entry, as the CO had the authority to issue the formal counseling in accordance with references (c) and (d).

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RECOMMENDATION

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

Petitioner's naval record be corrected by removing enclosure (6), his 24 July 2019 Administrative Remarks Page 11 counseling entry.

No further changes be made to Petitioner's record.

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.

1/15/2022

[REDACTED]
Deputy Director

Signed by: [REDACTED]