



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

█
Docket No: 5657-21
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) 10 U.S.C. § 1552
(b) MCO P1070.12K (IRAM)

Encl: (1) DD Form 149 w/enclosures
(2) Administrative Remarks (Page 11) 6105 counseling entry of 7 Apr 21
(3) Administrative Remarks (Page 11) entry of 7 Apr 21
(4) HQMC ltr 1070 JPL (undated)
(5) Petitioner email of 20 Dec 2021

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 “the 6105 in question” at enclosure (2).

2. The Board, consisting of █, █, and █, reviewed Petitioner’s allegations of error and injustice on 17 February 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 7 April 2021, Petitioner was issued an Administrative Remarks (Page 11) entry counseling him regarding a domestic abuse incident involving his spouse. The entry states the Commanding Officer determined by a preponderance of evidence the abuse incident met the definition of domestic abuse. By signing the Page 11, Petitioner acknowledged he was being processed for Administrative Separation. See Enclosure (2).

c. On 7 April 2021, Petitioner was issued a Page 11 entry placing him in a promotion restriction status for a period of 12 months due to his recent notification for Administrative Separation. See Enclosure (3).

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
XXX XX [REDACTED] USMC

d. On 21 July 2021, an Administrative Discharge Board (ADB) determined the preponderance of the evidence did not prove any of the acts or omissions alleged in the notification and recommended retention.

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

f. In enclosure (4), Headquarters, U.S. Marine Corps, Military Personnel Law Branch provided an unfavorable advisory opinion (AO) which opined that incidents documented in enclosure (2) do not run contrary to the administrative separation board findings or civilian prosecution of Petitioner's domestic violence case. In enclosure (5), Petitioner provided rebuttal evidence to the AO that included an email from his former spouse that provided context of the domestic violence incident.

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 entry at enclosure (2), which meets the requirements of reference (b), creates a permanent record 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 entry at enclosure (2).

However, the Board, noting the counseling entry at enclosure (2) 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 redact the reference to Petitioner's administrative separation processing from the Page 11 counseling entry at enclosure (2).

The Board further determined it was error for enclosure (3) to reference Petitioner's administrative separation processing which resulted in retention and concluded the entry should be redacted to remove the language pertaining to Petitioner's administrative separation processing.

RECOMMENDATION

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

Petitioner's naval record be corrected by redacting the following language from the Administrative Remarks (Page 11) 6105 counseling entry of 7 April 2021 at enclosure (2): "I understand that I am being processed for the following judicial or adverse administrative action: Administrative Separation."

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED]
XXX XX [REDACTED] USMC

Petitioner's naval record be corrected by redacting the following language from the Administrative Remarks (Page 11) entry of 7 April 2021 at enclosure (3): "...due to my recent notification for Administrative Separation."

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.

[REDACTED] 3/11/2022
[REDACTED]
Executive Director
Signed by: [REDACTED]