



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

[REDACTED]
Docket No. 5676-21
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) Title 10 U.S.C. § 1552
(b) MCO P1070.12K w/ ch1

Encl: (1) DD Form 149 w/enclosures
(2) Administrative Remarks page 11 counseling entry of 8 Jan 20
(3) Administrative Remarks (6105) page 11 counseling entry of 8 Sep 20
(4) Administrative Remarks page 11 counseling entry of 8 Sep 20
(5) Administrative Remarks (6105) page 11 counseling entry of 14 May 21
(6) HQMC memo 1400/3 MMPR-2 of 28 Sep 21
(7) HQMC memo 1070 Sect of 5 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 four Administrative Remarks (6105) page 11 counseling entries, removing three fitness reports from his official military personnel file (OMPF), and reinstating him to the rank of staff sergeant.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 5 April 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 as follows:

a. Before applying to this Board, Petitioner did not exhaust all administrative remedies available under existing law and regulation within the Department of the Navy. Petitioner requested removal of three fitness reports, however, Petitioner did not submit an application to Headquarters Marine Corps Manpower Management Records and Performance Branch prior to submitting his petition to this Board. Consequently, the Board concluded his request to remove the fitness reports in question was not yet ripe for the Board's consideration and did not review his request to remove the fitness reports.

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b. In October 2019, Petitioner was assigned as a recruiter to Recruiting Station [REDACTED] when an allegation arose regarding Petitioner having an inappropriate sexual relationship with a 17 year old Poolee. On 8 January 2020, Petitioner received enclosure (2), a page 11 counseling from his commanding officer (CO) for being relieved for cause (RFC) due to the CO's loss of trust and confidence in the Petitioner. Petitioner submitted a rebuttal on 14 January 2020 based on his delay of appointment to staff sergeant and RFC. Petitioner received one 6105 and one page 11 counseling entries on 8 September 2020. Enclosure (3) 6105 counseled Petitioner for violating Depot Order (DepO) 1100.4C and [REDACTED] Marine Corps District (MCD) Policy Letter 2-19 [REDACTED] PL 2-19), and notified Petitioner that he was being processed for administrative separation due to commission of a serious offense. The second page 11 entry, enclosure (4), notified Petitioner that he was not recommended for promotion to the rank of staff sergeant for a period of 12 months. Petitioner also submitted a rebuttal to these entries on 10 September 2020. Petitioner underwent an administrative discharge board (ADB) on 6 April 2021 and was recommended for retention despite finding that the preponderance of the evidence proved that Petitioner violated [REDACTED] PL 2-19 by using Snapchat with a recruit. The ADB did not find that Petitioner violated DepO 1100.4C by having an inappropriate relationship.

c. On 14 May 2021, Petitioner received enclosure (5) for violating Article 92 (Violation of a lawful order) and Article 93a (Abuse of position by a military recruiter) of the Uniform Code of Military Justice. Specifically, the entry counseled Petitioner for engaging in an inappropriate sexual relationship with a 17 year old female Poolee; noting that the Naval Criminal Investigation service (NCIS) "investigated the matter and that a 17 year old female civilian told NCIS that she engaged in consensual sexual activity with the Petitioner on at least one occasion. She also sent naked photographs of herself to the Petitioner over the Snapchat phone application after he hinted that he would like them." Finally, the counseling entry noted that Petitioner's "inappropriate behavior reflected poorly on the Marine Corps and adversely affected the relationship that Recruiting Station San Antonio had with the high school that the 17 year old female civilian attended as well as the local community in [REDACTED], [REDACTED]." On 16 and 18 May 2021, Petitioner submitted a rebuttal to enclosure (5).

d. Petitioner alleges that he was erroneously and unjustly given the 8 January 2020 and 8 September 2020 page 11 entries prior to completion of the NCIS investigation and that the 14 May 2021 6105 entry is invalid as the entry was given after the ADB did not substantiate the misconduct regarding the inappropriate relationship. Petitioner further claims that his record warrants promotion to staff sergeant with a date of promotion of 1 February 2020, as the ADB did not find sufficient misconduct to warrant withholding Petitioner's promotion.

e. Enclosure (6), an advisory opinion (AO) furnished by Headquarters Marine Corps (MMPR-2), recommended denial of Petitioner's request for reinstatement of promotion to staff sergeant based on the fact that the Petitioner's appointment to staff sergeant was not revoked, but in a delay status.

f. Enclosure (7), an AO furnished by Headquarters Marine Corps (Secretariat Branch) states the "6105 entry dated 8 September 2020 stated Sergeant [REDACTED] was being processed for Administration Separation. The reference (MCO P1070.12K) directs commanders not to make

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entries on page 11 which concern administrative discharge if they do not, upon final review, result in discharge.”

CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of enclosure (7), the Board determined that Petitioner’s request warrants partial relief. The Board found enclosure (3) erroneous, noting that reference (b) states that commanders are “not to make entries on page 11 which concern administrative discharge proceedings...if the proceedings, upon final review, do not result in an administrative discharge.” The Board thus concluded that enclosure (3) shall be removed from Petitioner’s record.

However, the Board determined that enclosures (2), (4), and (5) are valid and should not be removed from Petitioner’s OMPF as there is a distinction between these page 11 entries. The Board noted that enclosure (2) counsels Petitioner for being relieved for cause and losing the trust and confidence of the CO, enclosure (4) states that Petitioner is eligible but not recommended for promotion to staff sergeant, while enclosure (5) counsels Petitioner for having an inappropriate relationship with a recruit and adversely affecting the relationship the Recruiting Station had with a local high school.

The Board further determined enclosures (2), (4), and (5) were written and issued in accordance with reference (b). The Board noted that the CO had justification to counsel the Petitioner based on significant evidence from the NCIS investigation. In addition, the entries created a permanent record of matters the Petitioner’s CO deemed significant enough to document, and as the Petitioner’s CO, he was within his authority to issue the counseling entries. Finally, the Board noted that Petitioner signed enclosures (2), (4), and (5) and was afforded the opportunity to rebut the entries.

Finally, the Board concurred with the enclosure (6) and concluded it is inappropriate to take any action on Petitioner’s request for promotion while his promotion is in a delayed status. In the Board’s opinion, this issue was not yet ripe for the Board’s consideration since Petitioner’s promotion has not yet been revoked and is still pending administrative review by the Marine Corps. As such, the Board determined Petitioner had not yet exhausted his administrative remedies regarding his promotion delay. However, while the Board declined to act on the promotion request, it found no error or injustice with the Marine Corps’ decision to delay Petitioner’s promotion based on the NCIS investigation findings.

RECOMMENDATION

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

Remove enclosure (3), Petitioner’s 8 September 2020 Administrative Remarks (6105) page 11 regarding administrative separation. Note: The 8 September 2020 Administrative Remarks page 11 on the right hand side of the Administrative Remarks page regarding not recommended for promotion to staff sergeant shall remain in Petitioner’s OMPF.

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No further relief be granted.

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.

4/25/2022

[REDACTED]

Deputy Director

Signed by: [REDACTED]