



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

[REDACTED]
Docket No: 6290-21
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED]
[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 26 Aug 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 the Administrative Remarks (Page 11) counseling entry at enclosure (2).

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 20 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 26 August 2021, Petitioner was issued a Page 11 entry counseling him regarding his conduct during a 30 June 2021 Physical Fitness Test (PFT). Specifically, he was counseled because he quit the crunch portion of the PFT after the sprinklers came on even though he had not completed the minimum passing requirement and time remained on the clock. The entry further states he stomped off towards his vehicle, removed his shirt, and threw it to the ground, all while yelling aloud to express his frustration. See Enclosure (2).

c. The entry at enclosure (2) states "failure to take corrective action and any further violations of the UCMJ, disciplinary action, or incidents requiring formal counseling may result in judicial or adverse administrative action, including but not limited to administrative separation." The entry also does not give the Petitioner the opportunity to submit a rebuttal statement.

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d. Petitioner contends the entry is in error because it does not provide him an opportunity to submit a rebuttal as required by reference (b). Further, he contends the Executive Officer, when Petitioner asked to submit a rebuttal, told him “officers do not get to write rebuttals.”

e. Reference (b) states Page 11 entries for officers which concern administrative discharge proceedings are not authorized “if the proceedings, upon final review, do not result in an administrative discharge.” Further, reference (b) states Page 11 entries must include an opportunity to submit a rebuttal if the entry concerns misconduct or substandard performance.

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, 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.

However, the Board noted it was error for the entry to reference administrative separation and concluded the last sentence of the entry should be redacted.

The Board also determined it was error and unjust for Petitioner to be denied the opportunity to resubmit a rebuttal statement and concluded he should be allowed an opportunity to submit a rebuttal, providing it is in compliance with reference (b).

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 enclosure (2): “Failure to take corrective action and any further violations of the UCMJ, disciplinary action, or incidents requiring formal counseling may result in judicial or adverse administrative action, including but not limited to administrative separation.”

Petitioner shall be allowed to submit, for inclusion into his Official Military Personnel File, his rebuttal to enclosure (2), the 26 August 2016 Page 11 counseling entry. If Petitioner elects to submit the rebuttal, it must be in compliance with reference (b) and received by Headquarters, Marine Corps (MMRP-13) within 60 days of receipt of this letter.

That 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 Regulation, Section 723.6(e)) and

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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.

2/10/2022

[REDACTED]

Executive Director

Signed by [REDACTED]