



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

█
Docket No: 6329-21
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) 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 29 Mar 16

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), resetting his sergeant date of rank, making a unit diary entry to reset to 1 January 2016 vice 1 February 2016, and awarding back pay.

2. The Board, consisting of █, █, and █sey, 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 29 March 2016, Petitioner was issued a Page 11 entry stating he was selected but would not be promoted to sergeant for the month of January 2016 due to pending legal action. The entry is ambiguous as to whether he chose to submit a statement and the record does not contain his rebuttal statement.

c. Petitioner contends he should not have received the entry which is unjust and cost him a month of pay and allowance. He specifically contends the following:

(1) The entry at enclosure (2) is in error because it is not documented properly and not in accordance with "multiple orders."

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(2) He was eligible for promotion in January but was given the Page 11 entry stating he was pending legal action when he was actually just a witness in an ongoing investigation.

(3) He was never read his Article 31b rights and was told by the Naval Criminal Investigative Service (NCIS) that he was only a witness. In support of his contention, he states he submitted a Freedom of Information Act request to NCIS for any documentation that included his name but only received information from a unrelated incident. He contends this "proves" enclosure (2) is unjust.

(4) The rebuttal statement he submitted was never properly documented.

(5) The Page 11 entry is missing required verbiage from reference (b). Specifically, the entry does not include the full statement: "I was advised that within five working days after acknowledgement of this entry a written rebuttal can be submitted and this rebuttal will be filed on the document side of the SRB. I choose (to) (not to) make a rebuttal."

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. Further, the Board noted that although the entry is missing the complete rebuttal verbiage from reference (b), the error is not material because the entry still allows Petitioner the opportunity to submit a rebuttal. Therefore, the Board concluded there was insufficient evidence of an error or injustice warranting removal of the 29 March 2016 entry or the additional requested relief.

The Board, however, in the interest of justice, concluded Petitioner should be allowed an opportunity to resubmit his rebuttal within 60 days of receiving the Board's decision, providing it is in compliance with reference (b).

RECOMMENDATION

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

Petitioner shall be allowed to submit, for inclusion into his Official Military Personnel File, his rebuttal to enclosure (2), the 29 March 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 his 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.

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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.

2/10/2022

[REDACTED]

Executive Director

[REDACTED]