



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

[REDACTED]
Docket No: 6373-21
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 1070/12K (IRAM)
(c) MCO 1900.16 CH2 (MARCORSEPMAN)

Encl: (1) DD Form 149 w/enclosures
(2) Administrative Remarks (Page 11) 6105 counseling entry and associated rebuttal of 19 Aug 20
(3) Administrative Remarks (Page 11) entry of 21 Aug 20
(4) Administrative Remarks (Page 11) entry of 24 Aug 20
(5) Petitioner PCA req of 14 Jan 21
(6) Administrative Remarks (Page 11) entry and associated rebuttal of 25 Jan 21
(7) Administrative Separations with associated documentation
(8) Dep Naval IGMC Memo of 20 Jul 21
(9) HQMC ltr 1070 JPL of 8 Feb 22 (AO)
(10) Petitioner rebuttal to AO with associated documentation of 8 Apr 22

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 her naval record be corrected to remove an Administrative Remarks (Page 11) 6105 counseling entry dated 19 August 2020 and associated rebuttal, a Page 11 entry dated 25 January 2021 and associated rebuttal, and removal of all documents relating to her administrative separation. Enclosures (2), (5) and (7). Although the Petitioner did not request this action, the Board considered the removal of a Page 11 promotion restriction entry dated 21 August 2020. Enclosure (3).

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 14 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 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.

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b. Petitioner was issued a Page 11 6105 on 19 August 2020 concerning her failure to demonstrate proper customs, courtesies and traditions when addressing Marines senior in rank. Petitioner acknowledged and signed the entry, and chose to submit a rebuttal statement. Enclosure (2).

c. On 21 August 2020, Petitioner was issued a Page 11 promotion restriction not recommending her for promotion to Corporal (Cpl) for the month of September due to not being previously boarded. The entry did not note she was eligible for promotion to Cpl. On 24 August 2020, Petitioner was issued another Page 11 promotion restriction; noting that she was eligible for promotion but not recommend for the September promotion period due to not being boarded. Petitioner signed both entries and chose not to submit a rebuttal statement. Enclosures (3) and (4).

d. On 14 January 2021, Petitioner requested a Permanent Change of Assignment based on harassment, ostracism, retaliation, retribution and bullying. The Petitioner was subsequently reassigned to [REDACTED]). Enclosure (5).

e. On 25 January 2021, Petitioner was issued a Page 11 entry concerning her violation of Article 89 (Disrespect Towards a Superior Commissioned Officer) by failing to return the greeting of the day and disrespectfully answering a question about her leave status. Petitioner was also informed that she was being processed for administrative separation. Petitioner acknowledged and signed the entry, and chose to submit a rebuttal statement. Enclosure (6).

f. On 28 January 21, the Petitioner was notified that she was being administratively separated due to a pattern of misconduct with a General, under Honorable conditions, characterization of service. On 6 April 2021, the Commanding Officer (CO), Headquarters and Headquarters Squadron (H&HS) recommended separation. On 4 May 2021, the Commanding General, [REDACTED], disapproved the recommendation and directed retention. Enclosure (7).

g. On 20 Jul 2021, Deputy Naval Inspector General for the Marine Corps informed Petitioner that her reprisal complaint was reviewed by the DoD Inspector General and her complaint did not meet the requirements for an investigation. Enclosure (8).

h. Petitioner contends that based on the evidence, she believes she was the subject of harassment, maltreatment, bullying and ostracism. Petitioner also contends she was unfairly processed without sufficient evidence for administrative separation, and although the CG, [REDACTED] - [REDACTED] denied the request, the paperwork still remains in her record despite her attorney providing sufficient evidence that it was a defamation of character.

i. An advisory opinion (AO), provided by Headquarters Marine Corps, Military Personnel Law Branch on 8 February 2022, recommended the Petitioner's request be denied. The AO opined that the applicant has not provided substantial evidence of a material error or injustice in regard to her formal counseling entries and, there is no evidence that the entries were the result of harassment, bullying or ostracism. Enclosure (9).

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j. The Petitioner submitted a rebuttal statement to the AO, providing clarifying details on the facts of the case and reiterating her arguments for relief. The Petitioner also attached two letters from her attorney; one to the CG, [REDACTED] dated 28 April 2021 in regards to her pending administrative separation at the time, and another letter to the CO, H&HS dated 24 May 2021 for the removal of adverse entries. Enclosure (10).

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an error and injustice warranting partial relief. In this regard, the Board determined the following:

With regards to the Page 11 6105 counseling entry dated 19 August 2020, the Board determined that the issuing officer was well within his discretionary authority to issue the counseling entry at the time, and that the entry met the counseling requirements in accordance with reference (c). The Petitioner was afforded the opportunity to rebut the counseling and her rebuttal was considered by the Board. The Board thus concluded that the Page 11 6105 counseling entry does not constitute probable material error or injustice warranting removal from Petitioner's official military personnel file.

With regard to the Page 11 counseling entry dated 25 January 2021, the Board noted that the CO correctly issued the counseling entry at the time of issuance based on a perceived deficiency and pending administrative separation processing. The Board determined that the issuing officer was well within his discretionary authority to issue the counseling entry at the time, and that the entry met the counseling requirements in accordance with reference (c). However, since the result did not end in discharge, the Board determined the administrative processing comment contained in the counseling is not authorized in accordance with references (b) and (c). The Board thus concluded that the Page 11 counseling entry dated 25 January 2021 is in error, and the language informing the Petitioner that she was being processed for administrative separation shall be stricken from the Page 11 entry. Based on this recommended correction, the Board further concluded that the "redacted" Page 11 entry shall remain in the Petitioner's official military personnel file (OMPF).

Additionally, although the Petitioner was retained in the U.S. Marine Corps at the direction of the General Court Martial Convening Authority, the Board determined that all documents relating to the Petitioner's administrative separation be retained in her OMPF. The Board concurred with the AO that Petitioner failed to overcome the presumption of regularity regarding her counselings. In making this finding, the Board relied on the IG determination in her case. Consequently, since her administrative separation processing was based on misconduct contained in her counselings, the Board determined she was properly processed for administrative separation, regardless of the ultimate outcome of her processing.

With regards to the Page 11 promotion restriction dated 21 August 2020, the Board determined that the CO incorrectly issued the Petitioner the entry in accordance with reference (b). Thus, the Board determined it should be removed based on the issuance of the corrected Page 11 on 24 August 2020.

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The Petitioner also indicated in her application that she was the victim of reprisal. The Board determined there was insufficient evidence to conclude she was the victim of reprisal in violation of 10 USC 1034. The Board relied on the IG findings in her case and lack of corroborating evidence for her allegations.

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 (6), her Page 11 counseling entry dated 25 January 2021:

“Furthermore, I am also being advised that I am being processed for administrative separation for pattern of misconduct.”

Petitioner's naval record be corrected by removing enclosure (3), her 21 August 2021 Page 11 promotion restriction entry.

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.

5/27/2022

[REDACTED]

Executive Director
Signed by: [REDACTED]