



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

██████████
Docket No: 95-22
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) Title 10 U.S.C. § 1552
(b) MCO 5354.18
(c) MCO 1070/12K (IRAM)
(d) MCO 1900.16 (MARCORSEPMAN)

Encl: (1) DD Form 149 w/enclosures
(2) Administrative Remarks (Page 11) 6105 counseling entry, 19 Oct 18
(3) CO, ██████████ Memo 5000 EOR of ██████████
(4) Petitioner Original Complaint Summary Overview of 2 Nov 21
(5) CG, ██████████ Memo 5000 C47IG of ██████████
(6) CO, ██████████ Memo 5000 CO of ██████████

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 to remove an Administrative Remarks (Page 11) 6105 counseling entry dated 19 October 2018. Enclosure (2).

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 5 May 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. Although Petitioner's application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider the case on its merits.

b. By memorandum, on 22 June 2018, the Commanding Officer (CO), ██████████
██████████ contacted the ██████████ Equal
Opportunity Advisor (EOA) to inquire into whether or not Equal Opportunity rights of two
Marines were violated by the Petitioner. After receiving voluntary statements from both

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Marines, the EOA determined that the incident was not categorized as a Prohibited Activities (PAC) violation under reference (b). Enclosure (3).

c. On 19 October 2018, Petitioner was issued a Page 11 6105 counseling entry in accordance with references (c) and (d) concerning his violation of reference (b). Petitioner acknowledged and signed the entry, and chose not to submit a statement. Enclosures (2).

d. On 2 November 2021, Petitioner submitted a Fraud, Waste, Abuse or Management complaint on the grounds that he was issued an erroneous 6105 counseling entry for a PAC violation. On 3 December 2021, the Commanding General, [REDACTED] directed the CO, [REDACTED] take action on the Petitioner's complaint. On 6 December 2021, the CO, [REDACTED] responded by stating that documentation on file indicates the Petitioner did not violate the PAC order; therefore, there no investigation was ever conducted prior to issuing Petitioner his 6105 counseling. Enclosures (4) – (6).

e. Petitioner contends that he was instructed to sign the 6105 counseling entry or risk being placed on legal hold. Petitioner further contends he submitted a Freedom of Information Act (FOIA) request for details of the investigation, however, no investigation was found. Petitioner adamantly asserts that he did not violate the PAC order nor was he afforded the right to appeal the outcome.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board found an error and injustice with the Page 11 6105 counseling entry warranting relief. In this regard, the Board determined that Petitioner submitted sufficient evidence to support his contentions, and that the evidence of record does not support the matters of the Page 11 6105 counseling entry.

The Board noted the documentation provided by the Petitioner and determined that the command erroneously issued the Petitioner a Page 11 6105 counseling entry after receiving evidence that the Petitioner did not violate the PAC order nor was there any investigation conducted to prove otherwise. The Board therefore deemed the entry invalid. The Board concluded that the contested Page 11 6105 counseling entry shall be removed from Petitioner's official military personnel file.

RECOMMENDATION

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

Petitioner's naval record be corrected by removing enclosure (2), his 19 October 2018 Page 11 6105 counseling 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.

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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.

6/1/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]