



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

█
Docket No. 1106-22
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 P1070.12K w/ ch 1

Encl: (1) DD Form 149 w/enclosures
(2) Administrative Remarks (Page 11) 6105 counseling entry and rebuttal of 27 Nov 19
(3) SJA █ Marine Aircraft Wing Memo 5830 SJA
(4) █ Memo 5000 █ of 7 Jan 22
(5) █ email of 2 Feb 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 his naval record be corrected by removing an Administrative Remarks (Page 11) counseling from his official military personnel file (OMPF). Enclosure (2) applies.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 3 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 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 22 November 2018, Petitioner married his wife who had enlisted in the Marine Corps in 2017. Petitioner met his wife outside the Marine Corps via ultra-marathon activities. Petitioner's wife is one year and eight months older than Petitioner and had a career in social work before joining the Marine Corps at age 27. Petitioner informed his leadership and command about their relationship. Petitioner and his wife did not serve in the same unit or the same geographic location.

c. In March 2019, Petitioner submitted a waiver of time on station in order to be co-located with his wife. The request reached the Marine Aircraft Wing level, where the Marine Support

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
XXX XX [REDACTED] USMC

Group [REDACTED] (MWSG [REDACTED] Commanding Officer (CO) directed a command investigation (CI). The investigating officer (IO) of the CI recommended that Petitioner receive a Page 11 6105 counseling for violating Marine Corps fraternization policy. The Staff Judge Advocate (SJA), [REDACTED] Marine Aircraft Wing completed a legal sufficiency review of the CI and noted that the findings of fact in the CI report does not support the opinions. The SJA noted that Petitioner was not in violation of Article 92 of the Uniform Code of Military Justice (UCMJ) and that the error in the investigation is solely due to the IO's misapplication of the rule of law to the findings of fact, enclosure (3). Nevertheless, CO MWSG-[REDACTED] concurred with the CI findings and issued the Page 11 6105 counseling, on 27 November 2019, for violating Article 92 of the UCMJ, failure to obey an order or regulation, by having a romantic relationship with a Lance Corporal. Petitioner submitted his rebuttal to the counseling on the same day. See enclosure (2).

d. Petitioner contends enclosure (2) is erroneous and unjust as Petitioner informed his command of the relationship with his wife in November 2018 and his command accepted this relationship for ten months until Petitioner submitted a time on station waiver. Petitioner included with his petition a letter from a Lieutenant Colonel in his command, enclosure (4), as well as an email from his Company First Sergeant, enclosure (5), supporting Petitioner's request to have his Page 11 entry removed on the basis that the relationship did not meet the definition of fraternization and that the counseling occurred one year after the marriage.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board determined that Petitioner's request warrants relief. The Board noted that the senior leadership in the command was aware of Petitioner's relationship for ten months and, during that time, no action was taken in the form of counseling or other punitive measures. The Board also concurred with the SJA review that the IO's recommendations were not consistent with the law and the findings of fact since there was no violation of Article 92 of the UCMJ or the Marine Corps Manual. Consequently, the Board found the Page 11 6105 erroneous and unjust and determined that enclosure (2) shall be removed along with his rebuttal to the counseling.

RECOMMENDATION

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

Remove enclosure (2), Petitioner's Page 11 6105 entry dated 27 November 2019 and the associated rebuttal, from his record.

No other change is required.

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)),

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
XXX XX [REDACTED] USMC

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.

6/4/2022

[REDACTED]
Executive Director

Signed by: [REDACTED]