



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

[REDACTED]
Docket No: 1350-22
Ref: Signature Date

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

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

Ref: (a) Title 10 U.S.C. § 1552
(b) MCO 5800.16 V14
(c) MCO 1900.16F w/CH 3

Encl: (1) DD Form 149 w/attachments
(2) NAVMC 10132 Unit Punishment Book of 29 Jan 16
(3) Administrative Remarks (page 11) entries of 29 Jan 16
(4) CMC ltr 1610 MMRP-13/PERB ltr of 13 Dec 21
(5) [REDACTED] ltr 5800 [REDACTED] undated
(6) HQMC memo 1070 JPL of 10 May 22

1. Pursuant to the provisions of the reference, Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting to remove enclosures (2) and (3).

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 24 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, 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.

b. On 7 November 2015, while attending the Marine Corps birthday ball, Petitioner allegedly used physical force to keep his date from leaving the premises.

c. On 29 January 2016, Petitioner received non-judicial punishment (NJP) for violating Article 134, Uniform Code of Military Justice for conducting himself in a manner that disrupted good order and discipline by using physical force to keep his date from leaving the birthday ball

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and for holding her against her will. Petitioner was found guilty at NJP. Petitioner was awarded forfeiture of \$1704.00 pay for two months, forfeiture of \$1704.00 for one month was suspended for six months. See enclosure (2).

d. On 29 January 2016, Petitioner was issued a page 11 entry documenting the NJP. On the same date, Petitioner was issued a page 11 entry notifying him that he is eligible, but not recommended for promotion to Gunnery Sergeant (GySgt/E-7). See enclosure (3).

e. In a petition to the Performance Evaluation Review Board (PERB), Petitioner requested the removal of his fitness report for the reporting period 1 November 2015 to 10 February 2016. On 13 December 2021, the PERB approved a correction to Petitioner's record by removing his contested fitness report. See enclosure (4).

f. Petitioner contends that his request should be granted because the PERB granted relief by removing his adverse fitness report that documented the NJP. In addition, Petitioner furnished correspondence from the NJP awarding authority recommending that the NJP be set aside.

g. In correspondence from Petitioner's former commanding officer (CO), he request that all NJP documents be removed from Petitioner's record. The former CO stated that Petitioner's NJP should be set aside because Petitioner was cleared of all charges by the [REDACTED] District Attorney's Office. In addition, the charges filed by the [REDACTED] were rejected by the [REDACTED] District Attorney's Office. See enclosure (5).

h. The advisory opinion (AO) furnished by the Headquarters Marine Corps, Military Personnel Law Branch recommended the removal of Petitioner's NJP and associated page 11 entries. The AO noted that Petitioner provided evidence that his CO desired to set aside his NJP and that the PERB reviewed his evidence and granted relief by removing his fitness report. The AO determined that Petitioner's evidence provides proof that the NJP and associated documents were imposed before full civilian adjudication of the incident. The AO explained that ordinarily, an NJP should only be set aside when a clear injustice has occurred and within four months of imposition of NJP. In this case, the CO stated that Petitioner was cleared of all charges, implying that the NJP was facially unjust. Although the CO's set aside letter is undated and arguably written well after the four-month period prescribed, his request appears to be based on correspondence from the [REDACTED] District Attorney's Office. The AO also determined that Petitioner has provided substantial evidence demonstrating the existence of an injustice which warrants the relief requested. See enclosure (6).

CONCLUSION

Upon review and consideration of all the evidence of record, the Board found the existence of an injustice warranting corrective action.

The Board substantially concurred with the AO that Petitioner provided sufficient evidence demonstrating the existence of an injustice. In making this finding, the Board primarily relied upon enclosures (4) and (5). Based upon the totality of the evidence, the Board concluded that

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Petitioner's NJP and associated page 11 entries, enclosures (2) and (3), should be removed from his record.

RECOMMENDATION

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

Petitioner's naval record be corrected by removing enclosures (2) and (3) from his record.

Petitioner's pay record be audited by the Defense Finance Audit Service for payment of any monetary entitlements due as a result of removing enclosure (2).

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 Regulations, 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.

6/10/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]