



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

█  
Docket No: 1362-22  
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) Uniform Code of Military Justice

Encl: (1) DD Form 149 w/enclosures  
(2) CG, █ MAW ltr 1621 CG of 25 May 18  
(3) █ Response to PLOR dtd 1 Jun 18  
(4) CG, █ MAW ltr 5812 CG of 25 Jun 18  
(5) █ ltr 1001 OMPF of 16 Jul 18  
(6) CG, █ MEF FIRST ENDORSEMENT 1920 SJA of 2 Aug 18  
(7) CG, █ MEF ltr 1920 SJA of 2 Aug 18  
(8) Commander, █ MAW ltr 1920 CDR of 12 Oct 18  
(9) █ ltr 5812 TWT of 12 Feb 19  
(10) BOI Findings Worksheet  
(11) Report of the BOI of 3 May 19  
(12) █ ltr 1001 OMPF of 6 Jun 19  
(13) CG, █ MAW FIRST ENDORSEMENT 1920 CG of 24 Jun 19  
(14) CG, █ MEF SECOND ENDORSEMENT 1920 CG of 23 Aug 19  
(15) CG, █ MAW SECOND ENDORSEMENT 1920 CG ltr of 30 Aug 19  
(16) CMC ltr 1920 JPL of 20 Feb 20  
(17) NAVMC HQ 335 Routing Sheet of 2 Mar 20

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 all derogatory material from his Official Military Personnel File (OMPF) related to his 25 May 2018 nonjudicial punishment (NJP), which was set aside, and the Board of Inquiry (BOI), which recommended his retention.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 31 March 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 his naval record, 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. On 25 May 2018, Petitioner received NJP for violations of Articles 133 and 134 of reference (b), and was awarded a punitive letter of reprimand (PLOR) and forfeiture of pay. The PLOR at enclosure (2) was issued on 25 May 2018, and Petitioner submitted the statement at enclosure (3) in response. He elected not to appeal the NJP.

c. The Report of NJP was forwarded by Commanding General (CG), [REDACTED] on 25 June 2018 with a recommendation that Petitioner be required to show cause for retention in the Marine Corps. See enclosure (4).

d. On 16 July 2018, in response to the Report of NJP, Petitioner submitted a statement explaining the events of 31 March 2018 which resulted in NJP, the advice received from counsel that he not make a statement, and sincere regret for his conduct. See enclosure (5).

e. CG, [REDACTED] endorsed the Report of NJP on 2 August 2018 and concurred with the recommendation that Petitioner be required to show cause for retention. In separate correspondence on 2 August 2018, CG, [REDACTED] directed a BOI be convened to consider Petitioner's case. See enclosures (6)-(7).

f. Petitioner was notified on 12 October 2018 that a BOI would be convened to make a recommendation regarding his retention in the Marine Corps. The specific reasons for separation to be considered by the BOI were substandard performance of duty, misconduct, and moral or professional dereliction. See enclosure (8).

g. On 12 February 2019, Petitioner requested the CG, [REDACTED] set aside the NJP. See enclosure (9).

h. The BOI substantiated substandard performance of duty by reason of failure to demonstrate the acceptable qualities of leadership required of an officer of his grade but did not substantiate the basis of misconduct and moral or professional dereliction. The BOI further found the substandard performance of duty did not warrant Petitioner's separation from the U.S. Marine Corps, and recommended closing the case. The Report of the BOI was forwarded to the Secretary of the Navy on 3 May 2019. See enclosures (1)-(11).

i. Petitioner acknowledged receipt of the Report of the BOI and submitted the statement. See enclosure (12).

j. On 24 June 2019, CG, [REDACTED] forwarded the Report of the BOI, recommending approval. On 23 August 2019, CG, [REDACTED], forwarded the Report of the BOI, recommending the case be closed and the adverse material pertaining to the incident not be included in Petitioner's OMPF. See enclosures (13)-(14).

k. On 30 August 2019, Petitioner's NJP was set aside by CG, [REDACTED]. See enclosure (15).

l. On 20 February 2020, the Commandant of the Marine Corps (CMC) directed Petitioner's case be closed but directed inclusion of the adverse material concerning the matter in his OMPF. See enclosure (16). On 2 March 2020, the Staff Judge Advocate to the CMC routed enclosure (17) directing inclusion of the adverse material in Petitioner's OMPF.

m. Petitioner contends it is error and unjust for the derogatory material related to the NJP and BOI to be in his OMPF. Specifically, he contends the derogatory material should be removed from his OMPF because the NJP was set aside by CG, [REDACTED] after reviewing, for the first time, the video surveillance recording of the 31 March 2018 bowling alley incident which led to the NJP and subsequent BOI.



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Petitioner further contends it is unjust for derogatory material to remain because a BOI did not substantiate the misconduct basis.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board determined Petitioner's request warrants relief. The Board specifically determined that "but for" the NJP, which was subsequently set aside after the CG reviewed the video recording of the bowling alley incident, Petitioner would not have been required to show cause for retention in the Marine Corps at a BOI. The Board considered the totality of the circumstances and Petitioner's record of service and performance and concluded that, in the interest of justice, the derogatory material should be removed from Petitioner's OMPF.

RECOMMENDATION

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

Petitioner's naval record be corrected by removing enclosures (2) through (17) and any additional documents that reference the incident of 31 March 2018.

That 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.

4/29/2022

[REDACTED]

Deputy Director

Signed by: [REDACTED]