



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

[REDACTED]
Docket No. 1509-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
[REDACTED]

Ref: (a) Title 10 U.S.C. § 1552
(b) JAGINST 5800.7 (JAGMAN)
(c) MCO 1610.7

Encl: (1) DD Form 149 w/ enclosures
(2) Master Brief Sheet, 10 Sep 21
(3) Fitness Report for the reporting period 1 Jul 16 to 31 Aug 16
(4) Fitness Report for the reporting period 1 Sep 16 to 11 Jan 17
(5) Administrative Remarks (Page 11) 6105, 21 Jun 17
(6) Petitioner's Page 11 rebuttal (undated)
(7) Fitness Report for the reporting period 12 Jan 17 to 30 Jun 17
(8) [REDACTED] ltr, 5 Dec 20
(9) A-PES FITREP History
(10) HQMC PES memo 1610 MMRP-30, 26 Oct 21
(11) CMC ltr 1610 MMRP-13/PERB, 15 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 enclosure (7).

2. The Board reviewed Petitioner's allegations of error and injustice on 30 June 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 regulation within the Department of the Navy.

b. Petitioner was the Station Manager for American Forces Network (AFN), Marine Corps Air Station (MCAS) [REDACTED] from 29 January 2014 until 31 August 2016, when he was removed from his duties as the Station Manager due to allegations of workplace misconduct. Petitioner

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was issued a Change of Duty fitness report, and assigned duties as the Staff Noncommissioned Officer in Charge at the Joint Reception Center, MCAS [REDACTED] until 11 January 2017. Petitioner was then reassigned for duty as a Recreation Specialist, Marine Corps Community Services, MCAS, [REDACTED], and was issued a Transfer fitness report. Enclosures (2), (3), and (4).

c. Based on comments in Petitioner's contested fitness report, a Preliminary Inquiry (PI) substantiated allegations of Petitioner's misconduct. Upon review of the information contained in the PI, pursuant to his authorities under paragraph 0204 of reference (b), the Commander, Headquarters and Headquarters Squadron ordered a Command Investigation (CI) be conducted regarding the alleged misconduct. The CI substantiated the alleged misconduct committed by Petitioner when he was the Station Manager for [REDACTED]. Enclosure (7).

d. On 21 June 2017, Petitioner was issued an Administrative Remarks (Page 11) 6105 counseling him regarding "incontrovertible deficiencies" for improperly administering Extra Military Instruction, improperly denying Professional Military Education opportunities to Marines under his charge, exercising a toxic leadership, failure to obey orders, and failure to develop subordinates. Enclosure (5).

e. In an undated written rebuttal to the 6105 counseling, Petitioner took full responsibility for his shortcomings, and explained that "[a]ll of my actions were conducted without malice and geared toward leading, mentoring, and motivating those under my charge. . ." In support of his rebuttal, Petitioner included a list of personnel he personally sent to elective training, and a list of Marines who completed Marine Corps Martial Arts Program (MCMAP) training under his charge while assigned as the [REDACTED] Station Manager. Enclosure (6).

f. Petitioner was issued enclosure (7), his contested annual fitness report for the reporting period 12 January 2017 to 30 June 2017. The fitness report generated a relative value of 82.11 at processing, and was marked adverse due to the issuance of the aforementioned 6105 counseling. Additionally, due to the deficiencies identified in the 6105 counseling, his Reporting Senior (RS) recommended that Petitioner not be considered for promotion with contemporaries, which also renders the fitness report adverse. Petitioner rebutted the RS and Reviewing Officer (RO) comments. The Third Officer Sighter reviewed the fitness report for administrative correctness and found it in compliance with reference (c). Additionally, the [REDACTED] adjudicated all factual differences between the reporting officials' comments and Petitioner's rebuttals.

g. Petitioner contends that this fitness report is unjust and erroneous as the command that had administrative control over him exercised unlawful command influence on his RS, abruptly changed his RS and RO, and influenced the new RS and RO comments and marks. Petitioner included with his application several advocacy letters supporting his request to remove the contested fitness report from his official military personnel file (OMPF). In particular, enclosure (8), a letter from the former Deputy Chief of Operations for A [REDACTED], who was Petitioner's RS while Petitioner served as [REDACTED] Station Manager. The former RS believes the issuance of the 6105 counseling and subsequent adverse fitness report was not warranted because the "allegation of misconduct is factually incorrect." He also noted that he was not included in the decision to remove Petitioner from his position as Station Manager, and that Petitioner was

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not offered any type of counseling prior to his reassignment. The former RS also stated that he was pressured from leadership to write an adverse Change of Reporting Senior (CH) fitness report and that he refused based on his observation of Petitioner's performance.

Also in support of his contentions, Petitioner included enclosure (9), the Automated Performance Evaluation System (A-PES) fitness report history for the contested fitness report, which shows a lengthy processing timeline and multiple iterations. The history further shows that the originally designated RO was subsequently replaced by the Marine Corps Community Services (MCCS) Director.

h. Enclosure (10), an advisory opinion (AO) furnished by Headquarters, Marine Corps Performance Evaluation Section (MMRP-30), recommended denying Petitioner's request to remove the fitness report, noting that the myriad of enclosures submitted by the Petitioner omits any valid substantive evidence that would invalidate the underlying basis of report adversity. The AO also noted that Petitioner's primary evidence of a RS who was reluctant to document adversity substantiated by a CI does not obviate the fact that the RS ultimately provided factual basis of report adversity. The AO noted that if the RS was in fact unwilling to render the fitness report adverse, the RO could have rendered the observation as adverse in his stead. Furthermore, the RS signed Section J1 and both the RO and Third Officer Sighter referenced discussion with the RS during adjudication of factual differences.

The AO opined that the petition includes deflection, via confusion as to who should have served as reporting officials, to draw attention from the fact that the Petitioner was accused of misconduct, investigated for misconduct, subsequently substantiated by formal investigation, adjudicated via 6105 counseling, and adequately documented within the contested fitness report. Moreover, the 6105 counseling remains as valid derogatory material in Petitioner's OMPF.

The AO noted that the fact that the command intervened does not invalidate the fitness report, as the command intervention largely focused on providing the evidence cited for basis of adversity, which does not necessarily constitute undue command influence. Therefore, removal of the fitness report, largely founded on the results of a CI, without any suggestion, much less evidence, of impropriety with the findings of the CI.

The AO concluded that Petitioner has not met the burden of proof nor shown by preponderance of evidence probable material error, substantive inaccuracy, or injustice, warranting removal of the contested fitness report.

i. On 15 February 2022, the Headquarters Marine Corps Performance Evaluation Review Board (PERB) concurred with the AO and found the fitness report to be in compliance with reference (c). The PERB decision and the AO were provided to the Petitioner, and although he was afforded an opportunity to submit a rebuttal, he did not do so. Enclosure (11).

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 original RS wrote a compelling

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letter endorsing Petitioner's request. Moreover, the Board found there was evidence the fitness report's original RS resisted command pressure to write an adverse report, and that the RS was abruptly removed as a reporting official. The Board concluded that administratively the report did not contain an error but was unjust as there was sufficient evidence of undue command influence.

RECOMMENDATION

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

Remove Petitioner's fitness report for the reporting period 12 January 2017 to 30 June 2017.

That no further changes be made to Petitioner's naval record.

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. The foregoing action of the Board is submitted for your review and action.

8/12/2022

[REDACTED]

From: Assistant General Counsel (Manpower and Reserve Affairs)

Reviewed and Approved Advisory Opinion Recommendation (Deny Relief)

Reviewed and Approved Petitioner's Request and Board Recommendation (Grant Relief)

9/23/2022

[REDACTED]