



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

[REDACTED]
Docket No: 1802-22
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552
(b) MCO P1070.12K W/CH 1 (IRAM)
(c) MCO 5800.16-V15 (LSAM)
(d) SECNAVINST 1920.6D (Officer Admin Sep)

Encl: (1) DD Form 149 w/attachments
(2) State of [REDACTED] County citation and associated documents
(3) NAVMC 118(11) Administrative Remarks (Page 11) entry of 31 Jul 20
(4) Petitioner's rebuttal of 21 Aug 20
(5) CO, [REDACTED] ltr 5800 [REDACTED] of 8 Oct 21
(6) HQMC Memo 1070 [REDACTED] of 31 Mar 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 his 31 July 2020 Administrative Remarks (Page 11) entry and associated rebuttal.

2. The Board consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 7 April 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 Petitioner's application together with all material submitted in support thereof, relevant portions of Petitioner's 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.

b. On 21 June 2020, Petitioner was arrested and cited for driving while impaired, speeding, and for violating his concealed handgun permit. Petitioner "willfully refused to submit to a chemical analysis" and therefore appeared before a judicial official and surrendered his driver's license to the Court. Enclosure (2).

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c. On 31 July 2020, Petitioner was issued a Page 11 counseling in accordance with reference (b) for being arrested and cited for driving while intoxicated, violating his concealed handgun permit in that his blood alcohol content was above 0.0, and driving with a suspended license. Petitioner acknowledged the entry, and chose to submit a written rebuttal. In his rebuttal, Petitioner stated that his driver's license was suspended by mistake; he paid the fine and was told the matter was resolved. Petitioner also stated that he did not believe he was in violation of any statute since he was not carrying a weapon on his person. Enclosures (3) and (4).

d. On 2 September 2021, the [REDACTED] Judge found Petitioner not guilty of the driving while impaired charge, and dismissed the remaining charges. Enclosure (2).

e. On 8 October 2021, the CO, [REDACTED], submitted a Report of No Misconduct noting that the preponderance of evidence indicates Petitioner was cleared of the allegations, and per reference (d), his actions did not rise to the level of substandard performance of duty. Enclosure (5).

f. Petitioner contends that he was improperly issued the 31 July 2020 Page 11 counseling, as the issue was closed with a Report of No Misconduct.

g. By memorandum dated 31 March 2022, Headquarters Marine Corps Military Personnel Law Branch (JPL) provided an AO for the Board's consideration. The AO noted that Petitioner's formal counseling reflects allegations against him that are adverse, however, Petitioner's general court-martial convening authority determined no misconduct occurred. The AO further determined that the local administrative office inadvertently submitted the formal counseling and rebuttal without the appropriate personnel directing those matters be included in Petitioner's official military personnel file (OMPF), as required. The AO concluded that the Petitioner demonstrated the existence of material error or injustice, and recommended the contested documents be removed from his OMPF. Enclosure (6).

CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the AO, the Board determined that the Petitioner's request warrants relief. In this regard, the Board reviewed the Petitioner's application under the guidance provided in references (b) through (d), noted the allegations against Petitioner were unsubstantiated, and concluded that there is sufficient evidence of a material error or injustice. The Board concluded that the Page 11 counseling entry and corresponding rebuttal at enclosures (3) and (4), respectively, shall be removed from Petitioner's OMPF.

RECOMMENDATION

In view of the foregoing, the Board directs the following corrective action:

Petitioner's naval record be corrected by removing enclosures (3) and (4), his Page 11 counseling entry dated 31 July 2020 and the associated rebuttal dated 21 August 2020.

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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]