



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

[REDACTED]
Docket No: 1875-22
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552

Encl: (1) DD Form 149 w/enclosures
(2) Administrative Remarks entry and rebuttal statement of 3 May 21
(3) Fitness Report for the reporting period 1 Jul 20 to 31 May 21

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 the administrative remarks (Page 11) counseling entry of 3 May 2021 and the adverse fitness report for the reporting period 1 July 2020 to 31 May 2021 from his Official Military Personnel File (OMPF).

2. The Board, consisting of [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 31 August 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 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 did exhaust all administrative remedies available under existing law and regulation within the Department of the Navy regarding the Page 11 counseling entry but not with regards to the adverse fitness report.

b. Petitioner was issued a Page 11 on 3 May 2021 counseling him regarding the results of a Preliminary Inquiry (PI). Specifically, the Page 11 entry states that "As substantiated in a 27 Jan 2021 preliminary inquiry," during a conversation at work on 8 January 2021 regarding the Capitol riots, Petitioner stated to a subordinate Navy Lieutenant Commander, Air Force Captain, and Air Force Master Sergeant that "it would have been nice if they had gotten rid of some of those clowns." The counseling further states the Master Sergeant asked Petitioner to clarify what he meant and Petitioner "confirmed that [he] meant that it would have been nice if the rioters had killed some Congress members." Further, the counseling specifically states that "when the inquiry officer asked [Petitioner] about that conversation, [Petitioner] told him that [he] did not recall saying it. [He] only recall[ed] saying, on 6 Jan 2021, words to the effect of, 'they're getting after it' to the LCDR." Additionally, the counseling states that Petitioner "suggested the

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

possibility that anti-Trump co-workers might have misstated what [he] said because [he is] a white, military male with a shaved head.” See enclosure (2).

c. In his rebuttal to the Page 11 counseling entry, Petitioner states the counseling entry “mischaracterizes the findings and misleadingly states what was ‘substantiated’ in the preliminary inquiry.” He continues by explaining “the preliminary officer concluded only that ‘if [Petitioner] did in fact make that statement, it was very likely said in jest’ which accurately reflects the facts contained in the inquiry.” Further, Petitioner explained that the Preliminary Inquiry Officer (PIO) “found that [Petitioner] was ‘credible and forthcoming’ in response to his inquiry.” Petitioner requested that the counseling entry be “read in conjunction with the preliminary inquiry it purports to summarize.” See enclosure (2).

d. Petitioner was issued an adverse annual fitness report for the reporting period 1 July 2020 to 31 May 2021. The report was marked adverse by the Reviewing Officer (RO) because the Reporting Senior (RS) “failed to render this report adverse despite the Page 11 being issued and included in MRO’s OMPF.” Additionally, the RO marked Petitioner in the “unsatisfactory” block for the Section K comparative assessment and stated “I believe this report to be inflated in the leadership and judgment markings due to the demonstrated/documentated actions that resulted in the issuance of the Page 11 by CG [REDACTED].” The RO closed his comments by stating “Prior and subsequent to the Page 11 issues, MRO was performing exceptionally.” In response, Petitioner included a statement explaining his concerns that the PI, Page 11 documentation, and proposed course of action were still being adjudicated so the RS “followed the PES guidance and did not comment on the issue but rather marked and commented based on his daily observations of [Petitioner’s] performance.” Of note, the Third Officer Sighter did not complete his portion of the report until 18 May 2022 but ultimately concurred with the adverse nature of the report. See Enclosure (3).

e. Petitioner contends the following:

1) Inclusion of the Page 11 is in error and unjust because it contains incorrect and misleading information, as confirmed by the PIO’s report and his sworn testimony and the testimony of the Lieutenant Commander and Master Sergeant that heard the comment first-hand. Specifically, he contends the Page 11 is misleading in stating what was actually substantiated; made implications that are not supported by the findings of facts, opinion, or sworn testimony of the PIO; and is incorrect when accusing him of misleading the PIO.

2) His rebuttal to the Page 11 counseling entry was subsequently reviewed by the PIO who agreed with each line and testified to the same.

3) The Page 11 leads the reader to believe that any statement Petitioner made was serious as opposed to “in jest” as supported by the findings of the Preliminary Inquiry (PI) and the subsequent testimony of the PIO and two witnesses.

4) The Page 11 leads the reader to believe people actually thought Petitioner wanted someone killed which is inconsistent with the findings of fact, opinions, and sworn testimony.

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

5) The Page 11 implies that Petitioner lied although the PIO did not say or even insinuate, in his report or sworn testimony, that Petitioner lied. In fact, the PIO stated in his report that Petitioner was “credible and forthcoming.”

6) The Page 11 is incorrect in its accusation that Petitioner misled the PIO by stating Petitioner “suggested the possibility that anti-Trump co-workers might have misstated what [he] said because [Petitioner is] a white, military male with a shaved head.”

7) The National Security Agency (NSA), where Petitioner was – and continues to be – assigned, continues to have great trust and confidence in Petitioner. Since the Page 11, he has been read into additional Top Secret/Sensitive Compartmented Programs, chosen to serve on a NSA Civilian Promotion Board, interviewed and selected numerous individuals for leadership positions, and been appointed Acting Chief of [REDACTED] Division, elevating him from previous role as the Military Deputy Chief. Petitioner is currently backfilling a Defense Intelligence Senior Executive Service (SES) Tier 1 Civilian and reports directly to a Tier 2 SES

f. In support of his contentions, Petitioner submitted audio files and 35 character statements for the Board’s consideration.

CONCLUSION

Upon review and consideration of all the evidence, the Board concluded Petitioner’s request warrants partial relief.

The Board, relying on the supporting documentation provided by Petitioner, determined Petitioner’s request to remove the Page 11 counseling, issued 3 May 2021, should be granted.

After a full, thorough, and detailed review of Petitioner’s request for relief and supporting documentation, to include the audio files, the Board determined the tone and tenor of the Page 11 were incorrect and misleading because the counseling is written in such a way that affirmatively states Petitioner wanted harm to happen during the Capitol riots. Further, the Board found the use of the word “substantiated” to be inaccurate and unjust. Additionally, the Board determined the statement that Petitioner “suggested the possibility...” to inaccurately and unjustly insinuate that Petitioner misled the PIO and was not forthcoming. The Board concluded the Page 11 counseling unjustly contained “cherry-picked statements” in order to take the reader “down a path that neither the PI nor the underlying evidence established” and, in the interest of justice, should be removed from Petitioner’s OMPF.

Although Petitioner had not exhausted his administrative remedies by first requesting the Performance Evaluation Review Board remove the adverse report for the reporting period 1 July 2020 to 31 May 2021, based on its decision to remove the Page 11 counseling which forms the basis for the report’s adversity, the Board determined the fitness report should be modified by removing the RO and Third Officer Sighter sections, to include Petitioner’s statement in rebuttal to the RO’s comments, and remove any adverse markings. Noting Petitioner did not specifically object to the RS’s markings and comments, the Board determined the RS portion was highly favorable and concluded the fitness report should not be removed in its entirety.

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

RECOMMENDATION

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

Petitioner's naval record be corrected by removing enclosure (2), the Page 11 counseling entry of 3 May 2021 and the associated rebuttal statement.

Petitioner's fitness report at enclosure (3) be modified, as follows, and in keeping with the Board's decision to remove the adversity:

- a. Remove the "X" in Section A, Block 5a
- b. Mark Section K.1 as "insufficient" and remove the Sections 3 and 4 markings and comments
- c. Remove the "X" in Section K.2
- d. Remove Petitioner's attached statement in rebuttal to the RO's comments
- e. Remove the Third Officer Sighter comments

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.

9/25/2022

[REDACTED]
Executive Director
[REDACTED]