



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

██████████  
Docket No: 1934-22  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████  
██████████

Ref: (a) Title 10 U.S.C. § 1552  
(b) MCO P1070/12K w/CH1 (IRAM)  
(c) MCO 5800.16-V15 (LSAM)  
(d) SECNAVINST 1920.6D (Administrative Separation of Officers)

Encl: (1) DD Form 149 w/enclosures  
(2) Petitioner statement, 6Mar22  
(3) ██████████ (Ret) statement of fact, 28Jan22  
(4) ██████████ (Ret) Letter of clarification and character statement, 23Aug18  
(5) CO, ██████████ Relief of Duties and formal counseling letter, 19Jul16  
(6) Fitrep #2314641, 3Jun16-19Jul16 with associated AO and PERB decisions  
(7) Email traffic excerpts from command leadership  
(8) CO, ██████████ Request for Disposition, 2May18  
(9) Commander, ██████████ endorsement, 17May18  
(10) Administrative Remarks (Page 11) counseling entry, 24Jul18  
(11) Petitioner statement, 5Aug18  
(12) Commander, ██████████ Report of Substandard Performance, 6Aug18  
(13) Petitioner acknowledgement of Receipt of Report of Substandard Performance, 13Aug18  
(14) Petitioner response to Report of Substandard Performance, 29Aug18  
(15) ██████████ Memo, 21Sep18  
(16) CG, ██████████ endorsement to Report of Substandard Performance, 16Oct18  
(17) CMC Memo, Termination of Administrative Proceedings, 26Mar19

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 to remove all adverse material from his official military personnel file (OMPF). Specifically, his 24 July 2018 Administrative Remarks (Page 11) counseling entry with associated rebuttal response, his 6 August 2018 Report of Substandard Performance with associated response dated 29 August 2018, and all subsequent inclusion thereafter of adverse endorsements and documents entered into his OMPF.

2. The Board, consisting of ██████████ reviewed Petitioner's allegations of error and injustice on 23 August 2022, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record.



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Documentary material considered by the Board consisted of the enclosures, relevant portions of the 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. Although Petitioner's application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider the case on its merits.

b. In June 2016, an employee made an allegation of hostile work environment and sexual harassment against Petitioner. On 13 July 2016, Commanding Officer (CO), [REDACTED] assigned the Executive Officer (XO) to conduct a Preliminary Inquiry to inquire into the allegations against Petitioner. The investigating officer (IO) determined that Petitioner's behavior and conduct established that he lacked judgement and social awareness, and his relief and demobilization were appropriate. The IO recommended that Petitioner receive a counseling entry, per reference (b), documenting his actions<sup>1</sup>. As a result of his relief for cause on 19 July 2016, Petitioner was issued an adverse fitness report (Fitrep) for the reporting period; however, the adverse Fitrep was subsequently removed from the Petitioner's record due to incorrect statements and inconsistencies. Petitioner was subsequently demobilized to the Individual Ready Reserve and transferred to Special Projects Officer, [REDACTED] Enclosures (2) through (6).

c. In March 2017, a new CO took command of [REDACTED] and determined that the previous CO committed an administrative oversight by not placing the Petitioner on the Officer Disciplinary Notebook (ODN) in accordance with references (c) and (d). On 28 September 2017, the CO subsequently placed the Petitioner on the ODN for the "alleged" misconduct investigated by the previous CO. Enclosure (7).

d. On 2 November 2017, Petitioner made a protected communication request to the Inspector General of the Marine Corps (IGMC). Petitioner did not include his initial request and details of the complaint are not available. However, in Petitioner's statement at enclosure (2), he infers that the complaint was submitted against the CO for making false statements on his Fitrep, which was subsequently expunged from his record. Enclosures (2) and (6).

e. On 2 May 2018, the CO, [REDACTED] requested disposition in the case of the Petitioner for creation of a hostile work environment and substantiated incident of sexual harassment. The CO based his request on a "substantiated" incident of sexual harassment. The CO recommended that the Commander, [REDACTED] issue a Report of Misconduct based on substantiated misconduct. Enclosure (8).

f. By endorsement, on 17 May 2018, the Commander, [REDACTED] concurred in part with the CO, [REDACTED] determining that the evidence establishes that the Petitioner's conduct fell significantly

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<sup>1</sup> Petitioner did not attach a copy of the PI with his application and it was not available for viewing by the Board.

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below the expectations of an Officer of his grade and experience. The Commander, [REDACTED] recommended that the Petitioner be issued a Report of Substandard Performance of Duty (ROSP) documenting his relief for cause and short-comings as a leader and, that the Petitioner be required to show cause for retention. Enclosure (9).

g. On 24 July 2018, Petitioner was issued enclosure (10), a Page 11 counseling entry, concerning his repeated, insistent and inappropriate remarks to {redacted}...and his conduct demonstrated a lack of judgement, social awareness and professionalism not in keeping with the high standard expected of Marine Corps officers. Petitioner acknowledged and signed the entry, and chose to submit a rebuttal statement. Petitioner rebutted the language in the entry as it was derived from an unsubstantiated allegation dating back more than two years, the information is misleading and inaccurate, the counseling attempts to re-address and re-analyze an allegation two years after the fact, which was adjudicated. Petitioner further rebutted that both CO's made the deliberate decision not to submit a counseling, not to initiate a command investigation, and not to seek any further administrative or punitive measures. Petitioner was concerned that the counseling serves as a potential form of retaliation against him by his current CO. Enclosure (11).

h. On 6 August 2018, the Commander, [REDACTED] determined that the Petitioner failed to have social awareness and judgement, which substantiated substandard performance. The Commander recommended that the Petitioner not be required to show cause at a Board of Inquiry (BOI), the Petitioner be allowed to retire, the case be closed, and all adverse material be filed in his OMPF. The Petitioner was subsequently issued a ROSP. Petitioner acknowledged and accepted for the ROSP. Enclosures (12) and (13).

i. On 29 August 2018, Petitioner submitted a response to the decision made by the Commander, [REDACTED], rebutting the counseling issued on 24 July 2018 and the ROSP. Petitioner asserted that both were based on hearsay and opinion derived from a single "unsubstantiated" allegation dating back to 2016. Petitioner further asserted that the decision undermines the command decisions made by his battalion commander, regimental commander, and Third Officer Sighter in 2016. Enclosure (14).

j. On 21 September 2018, the IGMC determined that the Petitioner's hotline complaint submitted on 2 May 2018 had merit, the issue was founded, and forwarded disposition to the command for appropriate action. Petitioner did not submit a copy of his complaint nor did he elaborate on the details in his statement. Enclosures (2) and (15).

k. On 16 October 2018, the Commanding General (CG), [REDACTED] determined that the Petitioner's claim of potential retaliation is neither supported by the facts or timeline, Petitioner's protected communication request occurred after the initiation of adverse personnel action, the matter has been appropriately addressed by the Commander, [REDACTED], and does not warrant show cause at a BOI. The CG, [REDACTED] recommended the Petitioner's case be closed and all adverse material be filed in his OMPF. Enclosure (16).

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1. On 26 March 2019, the Commandant of the Marine Corps (CMC), after consulting with the Staff Judge Advocate to the CMC, determined that the adverse material does not warrant processing for administrative separation, directed the case be closed, and adverse material be included in the Petitioner's OMPF. Enclosure (17).

m. Petitioner contends adverse material was based on false premise and motivated by brazen retaliation, and statements made by the previous Regimental Commander and IO provide incontrovertible proof that the allegation against him was unsubstantiated, and that he did not engage in misconduct or substandard performance, thus proving the subsequent CO's statement made on 2 May 2018 to be false and misleading. Petitioner asserts that he was placed on the ODN after he submitted an IG complaint against the command and submitted a Freedom of Information Act request to obtain a copy of a CI into a money laundering scheme by the reporting senior. The Petitioner argues that the ROSP was based upon facts that the allegation of sexual harassment was "unsubstantiated" as proven in the letters provided by the previous CO and the IO. The Petitioner also asserts the command attempted to re-create and re-analyze a fully adjudicated event two years after the fact, using a single "unsubstantiated" allegation against him. Petitioner provided multiple statements on behalf of his support, to include statements from the previous CO and IO who conducted the PI. Petitioner also provided email traffic between the subsequent CO and command leadership in support of his retaliation contention and to show that he was placed on the ODN after his IG complaint and not before as stated by his command. Enclosures (2) through (4), and (7).

## CONCLUSION

Upon review and consideration of all the evidence of record, to include guidance provided in references (b) through (d), the Board finds the existence of an error and injustice warranting relief. In this regard, the Board determined that Petitioner submitted sufficient evidence to support his contentions, and that the evidence of record does not support the matters of the Page 11 entry and all subsequent adverse material entered into his OMPF.

The Board noted the timing of the page 11 entry, which was issued well after the incident in question and subsequent PI that resulted in an "unsubstantiated" finding. The Board heavily relied on enclosures (3) and (4), the statements provided by the previous CO and IO, in making their decision. Specifically, that the IO recommended "counseling and training not as a result of 'substantiated' misconduct or substandard performance, nor should it be interpreted or inferred that harassment was substantiated, but rather, to ensure and reaffirm that the Petitioner understood all rules and regulations related to equal opportunity." Furthermore, the previous CO intentionally did not take administrative action because he was "convinced that the allegation against the Petitioner was unsubstantiated." The Board noted that the Petitioner's Fitrep for the reporting period was removed and acknowledged that the removal, based on incorrect and inconsistent statements, was a determinant factor in their decision as well.

With regards to the Petitioner's contention that the command retaliated against him for a protected communication, the Board determined this had merit. The Board was convinced that the Petitioner's chain of command was well aware of the protected communication, as proven by the emails the Petitioner provided at enclosure (7) between the command leadership and the staff



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judge advocate, and determined that the counseling entry and all subsequent adverse material was unjust. The Board concluded that the counseling entry, along with all subsequent adverse material, shall be removed from his OMPF.

#### RECOMMENDATION

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

Petitioner's naval record be corrected by removing enclosure (10), his 24 July 2018 Page 11 counseling entry; enclosure (11), his 24 July 2018 statement in response to the counseling; enclosure (12), the 6 August 2018 Report of Substandard Performance; enclosure (13), his 13 August 2018 acknowledgement of receipt of Report of Substandard Performance; enclosure (14), his 29 August 2018 response to the Report of Substandard Performance; and enclosures (16) and (17), subsequent adverse endorsements.

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.

9/19/2022

[REDACTED]  
Executive Director  
[REDACTED]