



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

█
Docket No: 2402-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD ICO █
█ USMC

Ref: (a) Title 10 U.S.C. § 1552
(b) MCO 1900.16 w/CH 2

Encl: (1) DD Form 149 w/attachments
(2) Administrative Remarks (page 11) 6105 of 27 Mar 20
(3) █ ltr 2 Apr 20
(4) DD form 2718 Prisoner Release Order of 12 May 20
(5) Provost Marshal ltr 5580 PMO of 1 Jun 20

1. Pursuant to the provisions of the reference, Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting to remove enclosures (2) and (3).

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 24 May 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 regulations within the Department of the Navy.

b. On 27 March 2020, Petitioner was issued a page 11 entry counseling him for making a false official statement to the Naval Criminal Investigation Service (NCIS) and for failing to report a Marine suspected in an abusive sexual misconduct incident that Petitioner witnessed. The entry also counseled Petitioner for abusing his power as a NCIS Special Agent by threatening the Marine with opening an official investigation if he did not apologize to the victim of the sexual assault. See enclosure (2).

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c. Petitioner contends that the page 11 entry is unjust because the page 11 entry was not issued by the commanding officer (CO) in accordance to paragraph 6105.3 of the Marine Corps Separation and Retirement Manual (MARCORSEPMAN) but, instead, his section officer-in-charge (OIC). Petitioner also contends that according to the MARCORSEPMAN, the CO must sign adverse page 11 entries. In addition, Navy Regulation 0722 and the Judge Advocate General Instruction (JAGINST) 5800.7G describes non-punitive measures and defines a commander as an officer empowered to convene general or special courts-martial. As evidence, Petitioner furnished enclosure (4) a 12 May 2020 Prisoner Release Order signed by the CO and enclosure (5) a 1 June 2020 document signed by his section OIC, the Provost Marshal for comparative purposes.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board found the existence of an error warranting corrective action.

The Board noted that according to reference (b), the CO must sign all 6105 page 11 entries. Contrary to Petitioner's contention, all adverse page 11 entries are not 6105's and are not required to be signed by the CO. However, in this case, Petitioner was issued a 6105 page 11 entry and the entry was not signed by the CO. Reference (b) provides that the term Commander/Commanding Officer are "Interchangeable terms for a board-selected or duly appointed commissioned officer or warrant officer who, by virtue of rank and assignment and per reference (ao) United States Navy Regulations 1990 W/CH 1, exercises special court-martial convening authority and primary command authority over a military organization or prescribed territorial area that under pertinent official directives is recognized as a command." The Board determined that the Provost Marshal did not meet the requirements of a Commander/Commanding Officer and, therefore, Petitioner's contention has merit since the evidence, contained in enclosures (4) and (5), appears to show the page 11 was signed by the Provost Marshal. Accordingly, the Board determined that the page 11 entry was issued in error. The Board thus determined that enclosures (2) and (3) should be removed from Petitioner's record.

RECOMMENDATION

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

Petitioner's naval record be corrected by removing enclosures (2) and (3).

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

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[REDACTED] USMC

Board for Correction of Naval Records (32 Code of Federal Regulations, 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.

6/10/2022

