



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

█
Docket No. 2470-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █ █
█ USMC

Ref: (a) Title 10 U.S.C. § 1552
(b) MCO P1070.12K
(c) MCO 1900.16

Encl: (1) DD Form 149 w/ enclosures
(2) Administrative Remarks (Page 11) 6105 counseling, 27 Sep 16
(3) Administrative Remarks (Page 11) 6105 counseling, 29 Nov 16

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 (3).

2. The Board reviewed Petitioner's allegations of error and injustice on 7 July 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. On 15 September 2016, Petitioner, then sergeant, was involved in a motor vehicle accident. On 27 September 2016, Petitioner received a 6105 counseling for violating Article 86 of the Uniform Code of Military Justice (UCMJ) for failing to be at his appointed place of duty at the prescribed time, noting that "[e]ven after knowing you would be late for work, you still failed to notify your chain of command." The counseling also noted that at 0800, the Company First Sergeant received a phone call from a Marine stating that Petitioner had been in a motorcycle accident. Petitioner chose not to submit a written rebuttal to this counseling entry. Enclosure (2).

c. On 29 November 2016, Petitioner, now a staff sergeant, received a second 6105 counseling for violation of Article 111, UCMJ (Reckless Operation of a Vehicle). The

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counseling noted that on 15 September 2016, Petitioner was found to have caused a motor vehicle collision by attempting to illegally pass a civilian-operated vehicle. The counseling also noted Petitioner was “dragged beneath the truck approximately 30-50 feet” and “as a result of your demonstrated poor judgment and decision-making skills, you sustained a six-inch long laceration to your right leg and contusion to right foot.” The counseling also noted Petitioner’s actions demonstrated “a severe lack of judgment, arrogance, and level of immaturity that is not commensurate with your rank of Sergeant (at the time of the accident), your age, nor your Time In Service.” Petitioner chose not to submit a written rebuttal to this counseling entry.

d. Petitioner contends that the 6105 counseling at enclosure (3) is unjust as it was for the same vehicular accident that occurred on 15 September 2016 for which he had already received a 6105 counseling on 27 September 2016, when he was a sergeant, and since the incident occurred when Petitioner was a sergeant, the counseling entry would be recorded in his official military personnel file (OMPF) as part of his sergeant record. Petitioner argues that the contested 6105 counseling was issued for the same incident, but after he promoted to staff sergeant, and that it unjustly affects his performance record as a staff sergeant.

MAJORITY CONCLUSION

Upon review and consideration of all the evidence of record the Board Majority determined that Petitioner’s request warrants partial relief. The Majority noted that Petitioner was involved in a motorcycle accident that resulted in a significant injury to his leg and foot, which prevented Petitioner from reporting on 15 September 2016 in a timely manner. The Majority found that it was unjust to issue Petitioner a counseling for violating Article 86, UCMJ, and concluded that the 27 September 2016 counseling at enclosure (2) shall be removed.

The Majority, however, determined there was no material error or injustice regarding the 29 November 2016 counseling at enclosure (3). The Majority noted that the 29 November 2016 counseling entry expressly states that at the time of the incident Petitioner was a sergeant. Thus, the Majority concluded that the 29 November 2016 counseling at enclosure (3) shall remain in Petitioner’s OMPF.

MAJORITY RECOMMENDATION

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

Petitioner’s naval record be corrected by removing enclosure (2), the 6105 counseling entry dated 27 September 2016.

MINORITY CONCLUSION

Upon review and consideration of all the evidence of record, the Board Minority determined that relief is not warranted. The Minority noted that the Commanding Officer has discretion in issuing counseling entries, and that the entries were written and filed in Petitioner’s OMPF in accordance with references (b) and (c). With regard to the 27 September 2016 counseling, which is not challenged, the Minority believed it was the Petitioner’s poor judgment and actions that

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resulted in him not being at his appointed place of duty on 15 September 2016. With regard to the contested 29 November 2016 counseling, the Minority noted that the counseling appropriately documents Petitioner's violation of Article 111, UCMJ. The Minority also noted that Petitioner did not receive an adverse fitness report as a result of these counseling entries, and concluded there is no material error or injustice regarding the counseling entries and both shall remain in Petitioner's OMPF as written.

MINORITY RECOMMENDATION

In view of the foregoing, the Board Minority recommends that no corrective action be taken on 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]

Executive Director

From: Assistant General Counsel (Manpower and Reserve Affairs)

Reviewed and Approved Petitioner's Request (Grant Relief)

Reviewed and Approved Board Majority Recommendation (Grant Partial Relief)

Reviewed and Approved Board Minority Recommendation (Deny Relief)

Other: Reviewed and Approved (remove enclosures (2) and (3), counseling entries)

9/15/2022

[REDACTED]

Assistant General Counsel (M&RA)

[REDACTED]