



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

██████████
Docket No: 2677-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████
XXX XX ██████████ USMC

Ref: (a) 10 U.S.C. § 1552
(b) MCO 1610.7A (PES Manual)
(c) MCO P1070.12K w/CH 1 (IRAM)
(d) MCO 5800.16-V15 (LSAM)
(e) SECNAVINST 1920.6D (Administrative Separation of Officers)

Encl: (1) DD Form 149 w/attachments
(2) Administrative Remarks (Page 11) of 28 Feb 19
(3) Administrative Remarks (Page 11) of 28 Feb 19
(4) Petitioner rebuttal of 28 Feb19
(5) Fitness Report for the report period of 6 Oct 18 to 12 Mar 19
(6) Advisory Opinion HQMC 1070 JPL of 6 Jun 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 two separate Administrative Remarks (Page 11) entries dated 28 February 2019 and the associated rebuttal, to include duplicates, and his Fitness Report (Fitrep) for the reporting 6 October 2018 to 12 March 2019 from his official military personnel file (OMPF).

2. The Board, consisting of ██████████, ██████████, and ██████████, 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. 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 for the removal of the Page 11 entries. However, Petitioner did not exhaust his administrative remedies available by

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petitioning the Marine Corps Performance Evaluation Review Board (PERB) for removal of his Fitrep in accordance with chapter 10, paragraph 3a(2) of reference (b).

b. On 28 February 2019, Petitioner was issued enclosure (2), a Page 11 counseling in accordance with reference (c) for a negative trend of disregard for direct instructions from the squadron commanding officer (CO) and executive officer (XO) concerning strictly adhering to specific guidance in the standard operating procedures for flight training. Petitioner was also issued enclosure (3), a Page 11 counseling for substandard pattern of performance of a field grade officer, specifically, for not complying with orders from the XO to hard-schedule all Captains for attendance at the Military Occupational Specialty (MOS) Roadshow and for conducting a combat fitness test not in compliance with current orders. Petitioner acknowledged and signed both entries and chose to submit a rebuttal statement. In his rebuttal at enclosure (4), which the Petitioner does not specify to which Page 11 entry he is referring to, the Petitioner stated that he did not concur with the accuracy of the statements made in the entry. Petitioner's OMPF also includes two (2) duplicate copies of enclosures (2) and (3), and four (4) duplicate copies of enclosure (4).

c. Petitioner was issued enclosure (5), an adverse Transfer Fitrep for the reporting period 6 October 2018 to 12 March 2019 as a result of his substandard performance. Petitioner was marked "adverse" in two (2) attributes and Section I comments contained the following directed comment that referenced his Page 11 entries: "Page 11 entries were submitted IAW the IRAM para. 3005 to document instances of performance and judgement described in justification blocks of Sections D and G, respectively". Petitioner acknowledged the adverse nature of the Fitrep and submitted a response. In Petitioner's response, he noted that the information is factually incorrect, the reporting senior did not provide specific instructions for the MOS Roadshow, and every decision he made with student naval aviators was safe. The Third Officer Sighter adjudicated the factual differences of the Fitrep and concurred with the adverse nature.

d. Petitioner contends that, per reference (d), the general court-martial convening authority (GCMCA) must first determine whether misconduct occurred prior to submitting derogatory material in an officer's OMPF. Petitioner further contends that no investigation was conducted, no endorsements were routed to the GCMCA, no record or report of misconduct was generated, and the CO simply signed the Page 11's and had them uploaded into his OMPF without GCMCA authorization. Petitioner asserts that the Fitrep was marked adverse due to the derogatory material as a result of these erroneous Page 11's.

e. Enclosure (6), the AO, noted that the Petitioner's formal counselings reflect allegations against him that are adverse; however, the Petitioner's command failed to comply with substandard performance and misconduct reporting procedures as defined in references (d) and (e). Specifically, the AO concluded that Petitioner's command failed to follow the regulations by entering the counselings into Petitioner's record prior to submitting a Report of Substandard Performance to the Deputy Commandant of the Marine Corps, Manpower and Reserve Affairs and receiving approval to do so. JPL concluded that the Petitioner demonstrated the existence of material error or injustice warranting the removal of the Page 11 entries from his OMPF. With regards to the contested Fitrep, JPL determined that the Petitioner did not exhaust all

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administrative remedies for removal; however, at a minimum, recommended the information referencing the Page 11's be redacted from the Fitrep.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concurred with the AO and concluded that the Petitioner's request warrants partial favorable action.

The Board reviewed the Petitioner's application under the guidance provided in references (b) through (e) and concluded that it found sufficient evidence of a material error or injustice. The Board determined that the command did not have the authority to submit the Page 11's into the Petitioner's OMPF and directed that they be removed from his OMPF, to include rebuttal statements and all duplicate copies.

With regards to the removal of the Fitrep, the Board concluded that it shall be retained pending submission to the PERB, but redact the directed comment in Section I that references the Page 11 entries. Petitioner may reapply to the Board for removal of the Fitrep after exhausting his available administrative remedies by first applying to the PERB.

RECOMMENDATION:

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

Petitioner's naval record be corrected by removing enclosures (2) and (3), his 28 February 2019 Page 11 counseling entries, along with enclosure (4), the associated rebuttal dated the same.

Petitioner's naval record be corrected by modifying enclosure (5), his Fitrep for the reporting period 6 October 2019 to 12 March 2019; by redacting the following language from Section I comments:

"Page 11 entries were submitted IAW the IRAM para 3005 to document instances of performance and judgement described in justification blocks of Sections D and G, respectively."

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.

No further action be granted.

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

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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

Signed by: [REDACTED]