



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

██████████
Docket No: 3231-22
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) Title 10 U.S.C. § 1552
(b) MCO 1070/12K (IRAM)
(c) MCO 1610.7A (PES Manual)

Encl: (1) DD Form 149 w/enclosures
(2) Administrative Remarks (Page 11) 6105 counseling entry of 25Mar21
(3) Fitness Report of 1 Dec 20 to 31 Mar 21
(4) ██████████ COVID-19 email guidance
(5) ██████████ predeployment PFT email guidance
(6) Petitioner vaccination card
(7) Petitioner PFT MCTFS screenshot
(8) ██████████, Group Aid Station Medical Chit dtd 12Mar21
(9) RS ltr dtd 28Mar22

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 an Administrative Remarks (Page 11) 6105 counseling entry dated 25 March 2021 and a Fitness Report (Fitrep) for the reporting period 1 December 2020 to 31 March 2021 from his official military personnel file (OMPF). Enclosures (2) and (3) apply.

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 30 June 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, references (b) and (c), 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 did not exhaust all administrative remedies available under existing law and regulations within the Department of the Navy. Specifically, the Petitioner did not go through the Performance Evaluation Review Board, as required by the Performance Evaluation System (PES) Manual, in requesting removal of the Fitrep in question. As such, with regards to the removal of the Petitioner's Fitrep, the Board did not consider this portion of the Petitioner's request and directs that he petition the PERB to request its removal.

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b. By email correspondence, on 22 January 2021 and 3 March 2021, the Command Operations Officer issued guidance on predeployment guidance with regards to the COVID-19 vaccination and physical fitness testing (PFT), respectively, in preparation for deployment. As directed by the command, the Petitioner received his second vaccination shot on 9 March 2021. On 11 March 2021, the Petitioner participated in the command PFT and failed the run portion. See enclosures (4)-(7).

c. On 12 March 2021, the Petitioner visited the [REDACTED] and was issued a light duty medical chit for 7 days. See enclosure (8).

d. Petitioner was issued enclosure (2), a Page 11 6105, on 25 March 2021, counseling him concerning his PFT failure. Petitioner acknowledged and signed the entry. Petitioner also chose to submit a rebuttal statement; however, he did not include it in his petition nor was it in his OMPF.

e. Petitioner was issued enclosure (3), an adverse Fitrep for the reporting period as a result of his failed PFT. Petitioner acknowledged the adverse nature of the Fitrep and submitted a statement. Petitioner stated that he received his second dose of the Moderna shot two days prior to the PFT and suffered symptoms that lasted throughout the PFT. The [REDACTED] adjudicated the factual differences of the Fitrep and concurred with the adverse nature of the report.

f. Petitioner contends he was required to participate in a PFT; however, he suffered from significant side effects from the second Moderna shot. Petitioner further contends that he was issued a medical chit that supports he was sick. Petitioner ran another PFT on 18 March 2021 and passed, however, was issued the 6105 subsequently thereafter and an adverse Fitrep for the reporting period. Petitioner provided enclosure (9), a supporting endorsement from his Reporting Senior, recommending the removal of the contested Fitrep.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting partial relief. In this regard, the Board determined that Petitioner submitted sufficient evidence to support his contention that he was sick during the PFT, and that the Page 11 6105 counseling entry was issued unjustly. The Board noted that the Petitioner passed a subsequent PFT on 18 March 2021 and that entry shall remain a permanent part of his record. The Board concluded that the contested Page 11 6105 counseling entry shall be removed from the Petitioner's OMPF and his record will reflect he passed the PFT on 18 March 2021.

RECOMMENDATION

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

Petitioner's naval record be corrected by removing enclosure (2), his 25 March 2021 Page 11 6105 counseling entry.

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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.

7/19/2022

Signed by: [REDACTED]