



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

█
Docket No: 3413-22
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 1610.7A (PES Manual)
(c) MCO 1900.16 (MARCORSEPMAN)

Encl: (1) DD Form 149 w/enclosures
(2) Administrative Remarks (Page 11) 6105 counseling entry of 20 Nov 22
(unsigned by Petitioner)
(3) Administrative Remarks (Page 11) 6105 counseling entry of 20 Nov 22
(signed by Petitioner)
(4) Petitioner's rebuttal of 24 Nov 20
(5) Fitness Report for the reporting period 15 Jul 20 to 24 Nov 20
(6) MMRP-30 Advisory Opinion of 13 Jan 22
(7) MMRP-13/PERB Decision of 8 Apr 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 her naval record be corrected by removing enclosure (5) and implicitly requested removal of "duplicate copies" of Administrative Remarks (Page 11) 6105 counseling entries from her record enclosures (2) – (3).

2. The Board, consisting of █, and █ reviewed Petitioner's allegations of error and injustice on 14 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, 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.

b. On 20 November 2020, Petitioner was issued enclosure (2), a Page 11 6105 counseling her due to her loss of bearing and for being disrespectful towards a superior officer and civilian supervisor. The issuing officer signature block is annotated "Signature of OIC" and appears to

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have been signed by her officer-in-charge. The entry is also annotated “Service member refused to sign counseling” and also includes a witness signature.

c. Another, similar, Page 11 6105 counseling entry was issued by her Commanding Officer on 20 November 2020. Petitioner signed the entry and chose to submit a written rebuttal. In her rebuttal, Petitioner acknowledged that her actions were unacceptable, that “it goes against good order and discipline” and that “there is no excuse for having done this.” Enclosures (3) and (4).

d. Petitioner was issued enclosure (5), an adverse transfer fitness report for the reporting period 15 July 2020 to 24 November 2020. Petitioner’s Reporting Senior (RS) noted, in part, that Petitioner “demonstrates issues with conduct and discipline that had a direct impact on the climate and ability of the directorate of personnel to function” and that “her actions and behavior required reassignment and significant corrective action.” Petitioner rebutted the adverse nature of the fitness report and opined, in part, that it “has nothing to do with my work performance.”

e. Petitioner contends that the two Page 11 entries issued on 20 November 2022 are duplicative and were issued for the same incident. Petitioner also contends that the contested fitness report should be removed from her record because there are “too many administrative errors” and because her RS issued the fitness report in violation of the Performance Evaluation System (PES) Manual guidance, reference (b). Specifically, Petitioner asserts that her RS never initiated an initial counseling statement of duties, responsibilities, and expectations, and that the fitness report is being used in lieu of disciplinary action in order to make a factually weak case stick,

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an error and injustice warranting partial relief. In this regard, the Board determined that the Page 11 6105 counseling issued by her OIC is in violation of reference (c), because the OIC did not have the authority to issue a 6105 counseling. The Board determined, however, that Petitioner’s command corrected this error when the counseling was reissued by her Commanding Officer, who was well within his discretionary authority to do so. The Board thus concluded that enclosure (2), the Page 11 6105 counseling signed by Petitioner’s OIC, and not signed by Petitioner, shall be removed from her official military personnel file (OMPF), and that enclosure (3), the Page 11 6105 counseling signed by Petitioner and her Commanding Officer, shall remain in her OMPF. The Board also determined that any duplicate Page 11 entries be removed from Petitioner’s OMPF.

The Board substantially concurred with the AO and PERB decision, enclosures (6) and (7), that Petitioner’s contested fitness report shall remain as written and filed in her OMPF. The Board determined that Petitioner’s contention that the RS issued the contested fitness report in violation of MCO 1610.7A lacks merit. In this regard, the Board determined that during the reporting period, Petitioner was issued the Page 11 6105 counseling entry, two trait attributes were marked adverse, and she was reassigned due to her misconduct. Additionally, her RS did not recommend her for promotion, all of which renders the fitness report adverse. Further, the

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Petitioner had the opportunity to rebut the report's adversity and provided an addendum page rebuttal.

The Board also considered Petitioner's contention that the RS never initiated an initial counseling of duties, responsibilities, or expectations. However, the Board noted that Petitioner had previously received a 10-month observed fitness report by the same RS, for the same duty assignment and that the Petitioner omitted any suggestion of unfamiliarity with the duties listed in Section B of the contested fitness report. Therefore, the Board determined that there was insufficient evidence to support this claim.

The Board noted that Petitioner indicated in her application that she is a victim of reprisal. The Board determined there was insufficient evidence to conclude she was the victim of reprisal in violation of 10 USC 1034.

RECOMMENDATION

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

Petitioner's naval record be corrected by removing enclosure (2), the 20 November 2020 Page 11 6105 counseling entry with the "signature of OIC" and annotated as "Service member refused to sign counseling."

Petitioner's naval record be corrected by removing any duplicate Page 11 entries in her OMPF.

No further relief 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 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.

7/7/2022

[REDACTED]
Deputy Director
[REDACTED]