



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

[REDACTED]
Docket No. 3916-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
XXX XX [REDACTED] USMC

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

Encl: (1) DD Forms 149 w/attachments
(2) 6105 Counseling Entry, 14 Oct 16
(3) Rebuttal to 6105 Counseling Entry, 19 Oct 16
(4) Fitness report for the reporting period 2 Jul 16 to 24 Oct 16
(5) [REDACTED] ltr, 18 May 22
(6) BCNR Decision, SEA 11679-19, 23 Feb 21
(7) BCNR Decision, CES 4232-20, 17 May 21

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

2. A three-member panel of the Board, sitting in executive session, considered Petitioner's application on 12 July 2022. The names and votes of the panel members will be furnished upon request. Petitioner allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of the Board. 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, found the following:

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 14 October 2016, Petitioner, then a Gunnery Sergeant, was issued a 6105 counseling entry for being relieved for cause as the Motor Transportation (MT) Chief due to "overall unsatisfactory performance of your duties" as evidenced by the results in the Logistics Readiness Evaluation (LRE) of Petitioner's section. The counseling noted that Petitioner was identified as not adequately complying with the required regulations based upon the results of the LRE on 23

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September 2016. Petitioner acknowledged the 6105 counseling and submitted a written rebuttal. In his rebuttal, Petitioner notes that prior to his arrival, [REDACTED] ([REDACTED]) [REDACTED] “had failed a few” LRE and Field Supply and Maintenance Analysis Officer inspections, and that in his short time at [REDACTED], subsequent inspections show that his section was “heading in the right direction.” Petitioner also noted that he voiced his concerns regarding changes that the Command was making within the section, and that he believed his chain of command failed them. Enclosures (2) and (3).

c. Petitioner was issued an adverse fitness report for the reporting period 2 July 2016 to 24 October 2016. The adverse nature of the fitness report was due to the issuance of the 6105 counseling, Petitioner’s relief for cause, and a non-recommendation for promotion. The Reporting Senior (RS) commented that during an unannounced battalion rollout exercise, less than half of the battalion’s MT assets were non-operational or dead lined despite reports indicating a much higher readiness. The reviewing officer (RO) concurred with the RS’s assessment and noted that Petitioner failed to deliver despite clearly understanding the Battalion Commander’s expectation. Petitioner expressed his disagreement with his reporting officials in his rebuttals to their statements, and opined as to the circumstances that led to the issuance of the 6105 counseling and the adverse fitness report. The Third Officer Sighter—the same officer who issued the contested 6105 counseling—adjudicated the factual differences of the fitness report and concluded that Petitioner “is unwilling to accept that he was responsible for the motor transport operations which failed the inspection.” And his “. . . inability to accept constructive criticism and make the necessary change is evident by his distorted view of reality expressed in his rebuttals. This report is accurate and is duly warranted.” Enclosure (4).

d. In his application, Petitioner contends that the Commanding Officer (CO) who issued the contested 6105 counseling did not have all the information pertaining to the basis for the counseling. Petitioner claims again in his current application that, according to the inspectors, the unit failed the inspection due to the restructuring that occurred prior to the inspection. Petitioner noted that the CO who issued the counseling furnished correspondence requesting removal of the contested 6105 counseling entry. Enclosure (1).

e. Petitioner’s former CO, and issuing officer, requested removal of Petitioner’s 6105 counseling entry. The CO provided that, based on his review and personal knowledge of the case, “I am confident that I was not provided all the necessary or pertinent information regarding the case at the time it was issued.” Enclosure (5).

f. Two previous Board panels denied Petitioner’s request to remove the contested 6105 counseling entry. The Board panels determined that Petitioner’s counseling was valid, written in accordance with references (b) and (c), and his CO properly utilized the counseling to inform him of his deficiency. The previous Board panels also found Petitioner’s evidence insufficient to warrant relief. Enclosures (6) and (7).

MAJORITY CONCLUSION

Upon review and consideration of all the evidence of record, the Board Majority found the existence of an injustice warranting relief.

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In this regard, the Majority found the correspondence from Petitioner's former CO requesting removal of the 6105 counseling entry both creditable and compelling. The Majority noted that the correspondence was from the officer who issued the counseling and determined that Petitioner's 6105 counseling entry should be removed.

MAJORITY RECOMMENDATION

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

Petitioner's naval record be corrected by removing enclosures (2), the 6105 counseling entry, 14 October 2016 and enclosure (3), Petitioner's 19 October 2016 rebuttal.

That 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.

MINORITY CONCLUSION

Upon review and consideration of all the evidence of record, the Board Minority did not find the existence of an error or injustice warranting relief. In this regard, the Minority substantially concurred with the previous Boards' determination that Petitioner's 6105 counseling is valid.

Additionally, the Minority noted the officer who issued the 6105 counseling was also the Third Officer Sighter who reviewed and adjudicated the factual differences between the Petitioner and his reporting officials. Petitioner's fitness report rebuttal mirrors the assertions and contentions that Petitioner raised in his applications to the Board. Additionally, these same assertions and contentions were reviewed and determined by the Third Officer Sighter to be "disingenuous" and "inaccurate." The 6105 counseling issuing officer/Third Officer Sighter also determined that "[Petitioner's] inability to accept constructive criticism . . . is evident by his distorted view of reality expressed in his rebuttals." The Minority thus determined that the 6105 counseling issuing officer/Third Officer Sighter was fully aware of relevant facts and circumstances when he issued the counseling. Moreover, his request to remove the counseling, enclosure (5), in which he states "I was not provided all the necessary or pertinent information regarding the case at the time it was issued" lacks any specific details regarding what "necessary or pertinent information" was not known to him at the time he issued the counseling and adjudicated the fitness report when they were issued in 2016.

Based upon the totality of the evidence, the Minority concluded that the issuing officer's correspondence was unconvincing, that Petitioner's relief for cause and substandard performance was appropriately document, and there is insufficient evidence of a material error, substantive inaccuracy or injustice warranting corrective action.

MINORITY RECOMMENDATION

In view of the foregoing, the Board Minority recommends that no corrective action be taken on Petitioner's naval record.

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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.

8/15/2022

[REDACTED]

Executive Director

From: Assistant General Counsel (Manpower and Reserve Affairs)

Reviewed and Approved Board Majority Recommendation (Grant Relief)

Reviewed and Approved Board Minority Recommendation (Deny Relief)

9/23/2022

[REDACTED]

Assistant General Counsel (M&RA)

Signed by: [REDACTED]