



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

██████████
Docket No: 4967-22

Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████
██████████

Ref: (a) 10 U.S.C. § 1552
(b) MCO 5800.16 w/CH 2 VOL 14 (LSAM)

Encl: (1) DD Form 149 w/attachments
(2) NJP of 22 May 20
(3) Page 11 6105 Counseling Entry of 22 May 20
(4) Driver Training Completion Certificate of 19 Jul 20
(5) Law Office Memo of 30 Mar 22
(6) CO, ██████████ Notif of Vacation of Suspended Punishment Ltr of 6 Nov 20
(7) LES of 1-31 Mar 21
(8) HQMC Memo 1070 JPL of 8 Sep 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 to remove his unit punishment book/nonjudicial punishment (UPB/NJP) from his official military personnel file (OMPF) and to review his naval record for accuracy. Enclosures (2) through (7) apply.

2. The Board, consisting of ██████████, reviewed Petitioner's allegations of error and injustice on 18 October 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.

b. On 22 May 2020, Petitioner received NJP for violation of Articles 91, 113, and 134, UCMJ for disobeying an order to cease and desist from consumption of alcohol, physically controlling a vehicle while drunk, and drinking underage, respectively. Petitioner was awarded

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[REDACTED]

reduction to Private/E-1, forfeitures of pay for 2 months, and restriction and extra duty for 45 days. The forfeitures and reduction were suspended for 6 months. Petitioner acknowledged the acceptance of NJP, had an opportunity to consult with counsel prior to accepting NJP, and did not appeal the punishment. Petitioner was also issued an Administrative Remarks (Page 11) 6105 counseling entry, documenting the NJP. Petitioner acknowledged and signed the entry, and chose not to submit a rebuttal. Enclosures (2) and (3).

c. On 19 July 2020, Petitioner completed mandatory driving training for drug/alcohol offense. Subsequently, the county of [REDACTED], subsequently dismissed and expunged the Petitioner's case, presumably, for driving under the influence of alcohol. Enclosures (4) and (5).

d. On 6 November 2020, Petitioner was notified that the Commanding Officer (CO) was vacating his suspended sentence which he received at NJP due to possession and consumption of alcohol while under the legal drinking age of 21. The CO vacated the reduction to Private/E-1 but not the forfeitures. Enclosure (6).

e. In his application, Petitioner contends that he received little guidance throughout the NJP process, felt the process was not explained, was mishandled and rushed, and although he signed the NJP documents, was very unsure as to what took place. Petitioner further contends that after the NJP, his pay had discrepancies and believes he was improperly paid. Petitioner stated that he understood why he received NJP, but does not understand the violation that caused the reduction in rank nor was he afforded an opportunity to appeal the vacated punishment. To support his contention that he was improperly paid, Petitioner provided copies of his Leave and Earnings Statements (LES) during the period of his NJP. Enclosure (7).

f. Enclosure (8), an advisory opinion (AO) provided by Headquarters Marine Corps, Military Personnel Law Branch (JPL), recommended that the request be partially granted. Specifically, the AO recommended Petitioner be granted a reimbursement of his forfeitures since only his reduction in rate/paygrade punishment was vacated during the vacation hearing. However, with regards to the removal of the NJP, the AO concluded that the Petitioner failed to provide any evidence that the basis of the NJP was imposed in error or that the subsequent vacation of a portion of his NJUP sentence was improper. JPL concluded that the imposition of NJP and subsequent vacation complied with reference (b).

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds the existence of an error and injustice and concluded that the Petitioner's request warrants partial relief. The Board noted that the Petitioner furnished sufficient evidence to support his contention that the loss of pay, as reflected by his 1-31 March 2021 LES, is erroneous. The Board noted, that during the month of March 2021, Petitioner's LES reflected a deduction of \$1,732.00 of pay for the NJP held on 6 November 2020. Based on enclosure (6), the Board determined that the CO did not vacate the suspended May 2022 NJP forfeitures. Accordingly, the Board found that, more likely

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than not, an error exists with Petitioner's pay record that requires an audit of the documented forfeitures.

With regards to the removal of the NJP, the Board concurred with the AO in that the Petitioner failed to provide any evidence that the NJP was erroneous, inaccurate or unjust. The Board further determined that the Petitioner's contention that he received little guidance, lacks merit since he had the opportunity to consult with military counsel prior to the imposition of NJP. Finally, the Board considered the fact the civilian authorities chose to dismiss his criminal charges based on his completion of mitigation training; however, the Board concluded this action did not equate to a finding of innocence that could be applied in Petitioner's NJP case. The Board thus concluded that the Petitioner's request is lacking in sufficient evidence of probable material error, substantive inaccuracy, or injustice, warranting removal of the NP from his OMPF.

RECOMMENDATION:

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

HQMC (MMPR-2) conduct an audit of Petitioner's pay records and determine if a reimbursement of the aforementioned forfeitures in the amount of \$1,732.00 is appropriate, in the event such a correction has not already occurred.

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 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.

11/7/2022

[REDACTED]
Executive Director

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