



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

[REDACTED]
Docket No. 4997-22
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 1900.16
(c) MCO 1070.12K w/CH 2

Encl: (1) DD Form 149 w/attachments
(2) NAVMC 118(11) Administrative Remarks, 28 Jan 21
(3) CO, [REDACTED] ltr 1070 CO, 1 Feb 22
(4) HQMC memo 1070 SEC, 31 Aug 22

1. Pursuant to the provisions of the reference, Subject, hereinafter referred to as Petitioner, filed enclosure (1) with the Board for Correction of Naval Records (Board), requesting that Petitioner's naval record be corrected by removing the Administrative Remarks (page 11) entries dated 28 January 2021 and any mention of his non-judicial punishment.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] 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 the enclosures, relevant portions of Petitioner's 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 28 January 2021, Petitioner received non-judicial punishment (NJP) for violating Article 112a, Uniform Code of Military Justice (UCMJ) for the wrongful use of marijuana. On the same date, pursuant to references (b) and (c), Petitioner was issued a page 11 entry counseling him for regarding his NJP and use of marijuana. Petitioner was also notified that he is eligible, but not recommend for promotion to the next higher grade due to his NJP. Petitioner acknowledged both entries and elected not to submit a statement. Enclosure (2).

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c. In correspondence dated 1 February 2022, the Commanding Officer (CO), [REDACTED] set aside Petitioner's NJP. The CO's rationale for setting aside the NJP was because Petitioner "was found retained at an administrative separation board . . ." and "Sufficient evidence did not exist that supported the claim that he ingested or consumed an illegal substance knowingly." Enclosure (3).

d. In his application, Petitioner contends that the CO set aside his NJP. Petitioner claims that the unit punishment book and Marine Corps Total Force System entries have been removed, however, the associated page 11 entries are still in his record.

e. In an advisory opinion (AO) provided by the Marine Corps Secretariat Branch, the AO recommended that Petitioner's request be approved in part. The AO explained that NJP and administrative separation boards are separate processes with specific functions. Specifically, an administrative separation board is administrative in nature with the functional purpose of determining a member's suitability to serve on the basis of conduct and the ability to meet and maintain the required standards of performance, while NJP is disciplinary in nature and provides commanders with a means to swiftly maintain good order and discipline. The AO determined that the positive urinalysis test and evidence of the drug in Petitioner's system was sufficient to satisfy the Manual for Courts-Martial elements for willful use. However, because Petitioner's NJP was set aside, the AO recommended that Petitioner's page 11 entry documenting his NJP be redacted by removing the words "your recent nonjudicial punishment for." The AO also recommended that the page 11 entry advising Petitioner that he is not recommended for promotion be redacted by removing the words "as a result of my nonjudicial punishment awarded on 20210128". Enclosure (4).

CONCLUSION

Upon careful review and consideration of all the evidence of record, the Board found the existence of an error warranting partial corrective action.

The Board substantially concurred with the AO and determined that the administrative separation board's recommendation that Petitioner be retained on active duty did not obviate the fact that he tested positive for and was found to have used marijuana. The Board noted that reference (c) requires commanders to record all confirmed incidents of illegal drug use or possession. In consideration of the fact that Petitioner's NJP was set aside and he was retained in the Marine Corps, the Board determined that any mention of the NJP and administrative separation should be redacted from the contested page 11 entries.

RECOMMENDATION

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

Petitioner's naval record be corrected by redacting enclosure (2), Petitioner's 6105 page 11 entry by removing the statements:

"recent nonjudicial punishment for" and "I understand that I am

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being processed for the following judicial or adverse administrative action: administrative separation.”

Petitioner’s naval record be corrected by redacting enclosure (2), Petitioner’s page 11 entry not recommending him for promotion by removing the statement:

“as a result of my nonjudicial punishment awarded on (20210128)”

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.

That no further changes be made to Petitioner’s naval record.

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 Regulations, 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.

10/28/2022

[REDACTED]

Deputy Director

Signed by: [REDACTED]