



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

[REDACTED]
Docket No. 5783-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED], USNR, XXX-XX [REDACTED]

Ref: (a) Title 10 U.S.C. § 1552
(b) MPM 1626-020, 8 Oct 19
(c) MPM 1626-020, 13 Apr 2005
(d) BUPERSINST 1610.10A (EVALMAN)

Encl: (1) DD Form 149 w/attachments
(2) Court Memorandum, 11 May 06
(3) Fitness Report and Counseling Record, 17 May 06 to 15 Jul 06
(4) Office of Legal Counsel Memo PERS-00J, 22 Sep 22
(5) NPC memo 1610 PERS-32, 7 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 that his record be corrected by removing enclosures (2) and (3).

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 15 December 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 your application, together with all material submitted in support thereof, relevant portions of your 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. Petitioner underwent nonjudicial punishment (NJP) on 11 May 2006. The court memorandum (NAVPERS 1070/607) documenting the NJP, states Petitioner violated Article 92 of the Uniform Code of Military Justice (UCMJ), failure to obey an order. In addition, Petitioner received an evaluation report and counseling record covering the period 17 May to 15 July 2006 which stated that Petitioner demonstrated "significant problems following military rules and regulations." The evaluation further stated in block 43 that Petitioner was awarded NJP for UCMJ Articles 92 and 134. Enclosures (2) and (3).

b. Petitioner contends that enclosure (2) is unjust as he was not properly advised of his rights regarding NJP and his OMPF does not contain required documentation, specifically a unit punishment book (UPB) entry nor an Accused Notification and Election of Rights document. Petitioner further asserts that his evaluation is erroneous as the evaluation stated that he was awarded NJP for violation of UCMJ Articles 92 and 134 although there is no mention of Article 134 in his record and because the evaluation violated the Health Insurance Portability and Accountability Act of 1996 (HIPPA) as it stated that Petitioner was participating in an aftercare program for alcohol abuse.

c. Enclosure (4), an advisory opinion (AO) furnished by the Office of Legal Counsel (PERS-00J) recommended denying Petitioner's request. PERS-00J noted that under reference (b) if punishment is imposed after NJP a UPB entry and an Accused Notification and Election of Rights is to be placed in the member's

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OMPF. However, at the time the Petitioner received the NJP reference (c) was in effect and the only requirement was for enclosure (2) to be placed in the member's OMPF. Consequently, PERS-00J found that the command correctly followed the procedures in place at the time. Moreover, the PERS-00J AO noted that the evaluation did not violate HIPAA as the commanding officer (CO) was allowed to mention the alcohol abuse program if the CO received the information properly and there is no evidence that the CO received this information incorrectly. Enclosure 5, is an AO furnished by Navy Personnel Command (PERS-32) which noted that in accordance with reference (d) the reporting senior (RS) is allowed to document concluded NJP cases where there has been a finding of guilty or awarding of punishment. PERS-32 further stated that if the evaluation report incorrectly documents punishment for Article 134 it does not invalidate the report entirely, and the report can be corrected by redacting Article 134 from block 43.

CONCLUSION

Upon review and consideration of all the evidence of record, and especially in light of the advisory opinions, the Board determined that Petitioner's request warrants partial relief. The Board found that Petitioner's record contains no evidence that he was awarded punishment for violating Article 134. The Board thus concluded that in block 43 of the evaluation of 17 May 2006 to 15 July 2006 the verbiage "and Article 134" shall be removed. The Board however determined this error does not invalidate the evaluation and the evaluation, as modified, shall remain in Petitioner's OMPF as well as the Court Memorandum, which contains no material error or injustice.

RECOMMENDATION

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

Modify evaluation, enclosure (3), report 17 May 2006 to 15 July 2006 by removing/redacting "and Article 134" from block 43.

That part of the Petitioner's request for corrective action that exceeds the foregoing be denied.

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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

1/6/2023

[REDACTED]

Deputy Director

Signed by: [REDACTED]