



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

██████████  
Docket No. 6526-22  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████  
XXX XX ██████████ USMC

Ref: (a) 10 U.S.C. § 1552  
(b) MCO 1900.16 w/CH 1  
(c) MCO P1070.12K w/CH 1  
(d) OPNAVINST 3750.6S

Encl: (1) DD Form 149  
(2) Administrative Remarks (Page 11) 6105 counseling, 11 Feb 22  
(3) Petitioner rebuttal to 6105 counseling, w/enclosures, 18 Feb 22  
(4) ██████████ ATC, 9 Jul 21  
(5) Redacted CI ltr 5800 DJV, 27 Oct 21  
(6) CO, MCAS ██████████ ltr 5830 CO, 26 Oct 21  
(7) CO, H&HS memo 3000 ATC, 10 May 22  
(8) Advisory opinion, HQMC (JPL), 15 Nov 22  
(9) Petitioner ltr 3000 OSD, 14 Sep 22

1. Pursuant to 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 ██████████, ██████████, and ██████████ reviewed Petitioner's allegations of error and injustice on 17 January 2023 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. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. On 11 February 2022, pursuant to paragraph 6105 of reference (b), Petitioner was issued a 6105 counseling entry for lack of integrity, unlawful use of authority, and an inability to lead. Specifically, Petitioner falsified qualification documents, and put Marines and users of the Air Traffic Control Center at risk of a catastrophic mishap. Petitioner was also relieved of all duties within the Air Traffic Control Section due to a loss of trust and confidence to execute his duties.

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Petitioner acknowledged the entry and elected to submit a statement. In Petitioner's statement he argues that the 6105 counseling entry is materially false, the issue involves a single document (vice multiple) which is not a qualification document, and that it contains no false information. He further claims that the potential impact on operations described as "potentially catastrophic" was a gross and misleading exaggeration and that it was simply a minor clerical error elevated to the issuance of the 6105. Petitioner included three enclosures with his rebuttal statement, however, the enclosures were not inserted into his official military personnel file (OMPF) with his rebuttal to the 6105 counseling. Enclosures (2) and (3).

b. On 9 July 2021, Petitioner was issued an informal counseling for his inability to fulfil his duties as a Team Chief and Staff Non-Commissioned Officer (SNCO). The counseling noted that this was his second negative counseling following a verbal counseling conducted the by the Air Traffic Control SNCO in charge in June of 2021. The counseling gave Petitioner a deadline of 3 September 2021 to show improvement and a willingness to take accountability for his responsibilities as a Team Chief and SNCO. Enclosure (4).

c. In a Command Investigation into the facts and circumstances of alleged falsifying of position and currency records, the Investigating Officer (IO) opined that Petitioner did not direct a corporal to log a sergeant as present, but that he may have hinted at it, causing perceived pressure by the corporal and that there was a lack of evidence to determine whether Petitioner directed the corporal to falsify the position logs. The IO recommended that Petitioner receive a 6105 counseling entry or a non-punitive letter of caution (NPLOC). Enclosure (5).

d. On 26 October 2021, Petitioner was issued the NPLOC. Petitioner's Commanding Officer (CO) noted that throughout the course of the investigation it was found that a corporal falsified official documents in the form of ATC position reports due to perceived pressure. The CO also noted that, as the SNCOIC, Petitioner had an obligation to ensure his Marines adhered to policy, procedure, and regulation, and his influence misled the corporal, which contributed to the corporal's compromise of integrity. Enclosure (6).

e. In correspondence dated 10 May 2022, CO, [REDACTED] recommended revocation of Petitioner's ATC Specialist Credentials. As justification, the CO provided a detailed timeline of Petitioner's service within the command which noted various incidents of substandard performance which led to the CO's loss of trust and confidence in Petitioner's abilities to serve as a trusted air traffic controller, leader, and supervisor. The CO expressed his belief that based on the various incidents, Petitioner's continued work as an air traffic controller would put avoidable risk on commanders and those responsible for the safety of air traffic. Enclosure (7).

f. In his application at enclosure (1), Petitioner contends that the counseling entry contained false information. He also contends that the investigation and reporting procedures were not followed, specifically, that if an unsafe situation occurs, an investigation is required. He also claims that the ATC Facility Officer never mentioned performing an investigation, misrepresented documents, and submitted several false statements. Petitioner further contends that the enclosures to his rebuttal of the 6105 counseling were wrongfully omitted from his OMPF. Finally, he contends that the 6105 entry has been used to restrict his contract, support

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the revocation of his primary military occupational specialty and restrict his promotion eligibility.

g. The advisory opinion (AO) furnished by the Headquarters Marine Corps Military Personnel Law Branch (JPL), recommend granting partial relief. In this regard, the AO noted that the CO administratively counseled Petitioner in accordance with references (b) and (c), which grant commanders wide discretion by using this administrative mechanism to address deficiencies. The AO also noted that Petitioner did not provide substantial evidence that the CO's substantiation of misconduct was erroneous and evidence provided by the Petitioner suggests that the allegations were more extensive than his own description. The AO determined that Petitioner failed to demonstrate how or what information was false in the 6105 counseling. The AO also determined that the purpose of the investigative processes pertaining to mishap prevention and safety and are not intended to assist in the adjudication of misconduct and is thus irrelevant to the issuance of the contested counseling entry. The AO concluded that Petitioner did not provide any evidence of material error or injustice warranting the removal of the formal counseling entry from his OMPF. However, the AO did recommend that that the omitted enclosures to Petitioner's rebuttal be inserted into his OMPF, unless security or privacy concerns precluded such actions. Enclosure (8).

h. In response to the AO, Petitioner provided a lengthy statement with clarifying information and additional evidence in support of his contentions that the counseling entry is materially in error and unjust. Petitioner argued that there was no explanation for the AO's decision, and that the decision runs counter to evidence. Enclosure (9).

## CONCLUSION

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

In this regard, the Board substantially concurred with the AO that Petitioner's evidence was not sufficient in demonstrating an error or injustice warranting removal of the 6105 counseling entry.

The Board determined the contested counseling entry creates a permanent record of matters the issuing CO deemed an essential part of Petitioner's military history. The Board also determined the entry met the requirements detailed in reference (c). Specifically, the Board noted the entry provided Petitioner the opportunity to rebut the entry and that he furnished a rebuttal for inclusion in his OMPF. Further, the Board noted the entry was appropriately issued by the CO as evidenced by his signature on the entry. The Board thus concluded there is insufficient evidence of material error or injustice warranting removal of the contested 6105 counseling.

The Board, however, concurred with the AO that the three omitted enclosures to Petitioner's rebuttal should be inserted into Petitioner's OMPF.

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## RECOMMENDATION

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

Petitioner's naval record be corrected by inserting the documents (1) through (3) on Petitioner's 18 February 2022 rebuttal at enclosure (3).

- ATC Training Evaluation Dtd 22 Nov 2021
- Letters of Support
- GCA Simulation Log

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

2/17/2023

[REDACTED]

Deputy Director

Signed by: [REDACTED]