



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

[REDACTED]
Docket No. 6614-22
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 w/ch 1
(c) [REDACTED] Memorandum of Understanding 22 Jul 21

Encl: (1) DD Form 149 w/enclosures
(2) Administrative Remarks Page 11 (6105) counseling entry, 18 Feb 22
(3) Rebuttal to 6105 counseling entry, undated

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 naval record be corrected by removing enclosure (2) from his official military personnel file.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 27 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, found as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.

b. Petitioner received enclosure (2), a 6105 counseling entry on 18 February 2022, for violating Article 92 of the Uniform Code of Military Justice (UCMJ), by wrongfully giving his personal cell phone number to a student and commenting on a student's Facebook page in an attempt to develop a personal relationship with the student while he was assigned as an instructor providing training in violation of reference (c).

c. Petitioner contends that enclosure (2) is erroneous and unjust and should be removed because reference (c) is not a punitive order, he did not attempt to develop a personal relationship with the student, the Facebook comments were taken out of context, and his receipt of a counseling entry was too harsh of a punishment for the conduct alleged.

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CONCLUSION

Upon review and consideration of all the evidence of record, the Board determined that Petitioner's request warrants partial relief. The Board found that wording in the counseling was erroneous and vague, specifically, the entry states: "You were the subject of a Command Investigation and it was found you violated Article 92 of the UCMJ." The Board found this language confusing as a promotion selection board member could believe Petitioner was subject to non-judicial punishment.

In this regard, the Board found Petitioner submitted no evidence that the underlying misconduct noted in the counseling was incorrect. Moreover, the Board noted that in the Petitioner's rebuttal statement to the counseling, enclosure (3), the Petitioner admitted that he violated reference (c), by giving his personal cell phone number to a student. Consequently, the Board determined that the counseling was issued in accordance with reference (b) and found that the removal of the counseling is not warranted as the modification to the entry corrects the error. The Board thus concluded that the counseling, as modified below, shall remain in Petitioner's record.

RECOMMENDATION

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

Modify Petitioner's 18 February 2022 6105 counseling entry by redacting "You were the subject of a Command Investigation and it was found you violated Article 92 of the UCMJ."

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.

11/14/2022

[REDACTED]

Deputy Director

Signed by: [REDACTED]