



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

[REDACTED]
Docket No. 8089-22
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED] [REDACTED]
[REDACTED] USMC

Ref: (a) Title 10 U.S.C. § 1552
(b) MCO 1900.16 w/CH 2
(c) OPNAVINST 5350.4C

Encl: (1) DD Form 149 w/enclosures
(2) Administrative Remarks (Page 11) 6105 Counseling Entry, 22 Feb 22
(3) Petitioner's Rebuttal to the 22 Feb 22 6105 Counseling Entry, undated
(4) [REDACTED] Law Firm, LLC ltr, 28 Sep 22
(5) CO, [REDACTED] ltr 1320 S-1, 28 Sep 22
(6) Advisory Opinion by HQMC memo 1070 JPL, 30 Dec 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 naval record be corrected by removing enclosure (2).

2. The Board, consisting of [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 10 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 the naval records, and applicable statutes, regulations, and policies.

3. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations 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 22 February 2022, pursuant to paragraph 6105 of reference (b), Petitioner was issued a 6105 counseling entry for violation of Article 92. On 2 October 2021 Petitioner was cited and arrested for Driving Under the Influence (DUI) in [REDACTED]. Per reference (c), Petitioner failed to report his arrest to his chain of command. Petitioner acknowledged the entry and in his statement, Petitioner acknowledged that he had a lapse in judgement and understands the importance of accountability of one's actions. Enclosures (2) and (3).

b. In correspondence from Petitioner's counsel dated 28 September 2022, he noted that Petitioner's charge for DUI was dismissed on 5 August 2022. Petitioner's counsel also noted that a review of the Court's website no longer shows Petitioner's case. He advised that the expungement process has begun and all records regarding the arrest should be removed from Petitioner's civil record shortly. Enclosure (4).

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c. In correspondence from Petitioner's Commanding Officer (CO) dated 28 September 2022, requested that Petitioner's 6105 counseling entry be removed based upon the civilian court's decision to drop the charges. Enclosure (5).

d. Petitioner contends that the counseling entry should be removed from his record because the charges were dropped by the civilian court. Enclosure (1).

e. An advisory opinion from Headquarters Marine Corps, Military Personnel Law Branch (JPL) was provided for the Board's consideration which recommended that Petitioner's request be granted. Enclosure (6).

CONCLUSION

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

The Board substantially concurred with the AO that Petitioner provided sufficient evidence of an injustice. In this regard, the Board noted that the CO that issued the counseling entry also advocated for removal after the dismissal of charges. The Board also noted the basis for the entry was not supported by the correct reference. The Board was compelled by the letter provided by Petitioner's CO and concluded that the contested counseling entry and rebuttal statement shall be removed from Petitioner's record.

RECOMMENDATION

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

Petitioner's naval record be corrected by removing enclosures (2) and (3).

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.

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.

2/1/2023

[REDACTED]
Deputy Director
[REDACTED]