



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

██████████
Docket No. 8474-22
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) Title 10 U.S.C. § 1552
(b) MCO 1900.16 CH2

Encl: (1) DD Form 149 w/attachments
(2) 6105 Counseling Entry, 7 Feb 22
(3) 6105 Counseling Entry Rebuttal, [5] Feb 22
(4) ██████████ ltr ██████████ SER00JF/22U1651, ██████████

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 to remove enclosures (2) and (3).

2. The Board, consisting of ██████████, ██████████, and ██████████ 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 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 5 September 2018, Petitioner was assigned to Marine Aircraft Group ██████████
██████████ Marine Aircraft Wing ██████████), ██████████.

c. On 23 October 2021, Petitioner was detached from ██████████, ██████████ MAW and was transferred to Marine Corps Recruiters School, ██████████.

d. On 7 February 2022, the Commanding Officer (CO), Marine Corps Recruiters School issued Petitioner a 6105 counseling entry for violating Article 134, Uniform Code of Military Justice for hosting parties at his on-base residence in ██████████ on or about 25 November 2020, while "LSD and Triple C's (or similar drugs)" were being used. The entry noted that

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Petitioner's junior Marines and other Marines confessed that Petitioner had knowledge of their use of drugs at his place of residence. Petitioner acknowledged the entry and in his statement, denied the allegations. Petitioner explained that he was under COVID restrictions during and could not allow anyone into his residence for 14 days. After the COVID restriction period, he was on leave for 23 days. Petitioner noted that he did not receive a copy of the investigation, there has been no non-judicial punishment (NJP), court-martial or other proceedings and there has been no finding of guilt. Enclosures (2) and (3).

e. On 26 September 2022, in response to Petitioner's Freedom of Information Act (FOIA) request, the Naval Criminal Investigative Service (NCIS) notified Petitioner that the requested file is currently exempt from disclosure because the investigation is still pending. NCIS also notified Petitioner that pursuant to FOIA, subsection (b)(7)(A), law enforcement records are exempt if the production of the records at the time requested reasonably can be expected to interfere with enforcement proceedings. Enclosure (4).

f. In his application, Petitioner contends that he was under COVID restrictions during that time indicated in the counseling entry and could not allow anyone into his residence for 14 days. After that he was on leave for 23 days. Petitioner also contends that the allegations in the counseling entry would require that he be processed for administrative separation. He was not—proving that there was no evidence to support the allegations. Petitioner argues that the entry is meritless and contradicts reference (b), and the counseling entry was not issued by the command where the allegations were investigated and took place. Petitioner also argues that the entry was only issued because the command had no evidence to convict him at court-martial, he has been precluded from seeing any evidence against him, and there has been no NJP, court-martial or other proceedings.

CONCLUSION

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

The Board noted that Petitioner's counseling entry was issued according to reference (b) and was properly adjudicated by the CO, Marine Corps [REDACTED], who on the date of the counseling entry was Petitioner's CO. The Board also noted that based on the nature of Petitioner's alleged misconduct, there was no requirement for administrative separation processing. The Board, however, considered the severe nature of the allegations and determined that because the investigation is still ongoing, there is insufficient evidence that the misconduct noted in the counseling entry was substantiated. The Board also determined that Petitioner's inability to view the evidence against was unjust and impeded his ability to provide an informed rebuttal to the allegations. Based on the foregoing, the Board concluded that the contested counseling entry and associated rebuttal statement shall be removed.

RECOMMENDATION

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

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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 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.

1/23/2023

[REDACTED]

Deputy Director

Signed by: [REDACTED]