



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

[REDACTED]  
Docket No. 9042-22  
Ref: Signature Date

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

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

Ref: (a) Title 10 U.S.C. § 1552  
(b) MCO P1070.12K (IRAM)

Encl: (1) DD Form 149 w/enclosures  
(2) 6105 counseling entry and rebuttal, 2 Dec 20  
(3) 6105 counseling entry, 14 Dec 20  
(4) Petitioner rebuttal (undated) to the 14 Dec 20 6105 counseling entry  
(5) Page 11 counseling entry, 25 Jan 21  
(6) Administrative Discharge Board Report, 9 Apr 21  
(7) County of [REDACTED] Dept Certificate of Release, 11 Oct 20

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 enclosures (2) and (5), and add enclosure (4), back into his official military personnel file (OMPF).

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

a. On 2 December 2020 Petitioner received a counseling entry, enclosure (2), after being arrested for battery, using force with his hand against his spouse, and being drunk and disorderly in violation of Article 128 (Assault consummated by a battery upon a spouse) and Article 134 (Disorderly conduct, drunkenness) of the Uniform Code of Military Justice (UCMJ). Petitioner submitted a written rebuttal stating, in part, that he did not physically assault his wife and that civilian authorities did not file any charges.

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b. Petitioner subsequently received a counseling entry on 14 December 2020. The counseling entry, enclosure (3), was issued due to Petitioner's deficiencies as the Battalion Unit Training Coordinator. Petitioner submitted a rebuttal to this counseling which was erroneously removed from his OMPF, enclosure (4).

c. On 25 January 2021 Petitioner received a counseling, enclosure (5), stating he completed inpatient treatment for alcohol on 18 January 2021.

d. Petitioner underwent an administrative discharge board (ADB) on 9 April 2021 and the ADB determined that the preponderance of the evidence did not prove any of the acts or omissions alleged in the notification, and recommended retention, enclosure (6).

e. Petitioner requests that the Board remove the counseling entry dated 2 December 2020, enclosure (2), because it contains false information. Specifically, Petitioner argues that the entry erroneously states he was arrested for domestic assault, however, Petitioner alleges he was only detained and not arrested. Petitioner claims this counseling negatively effects his ability to promote and to be retained in the Marine Corps. Petitioner attached evidence from the County of [REDACTED] Sheriff's Department to support his case, enclosure (7). Petitioner also claims that the rebuttal he submitted to his counseling entry regarding his program inspection failure, enclosure (4), was erroneously removed from his OMPF as a result of his previous Board [BCNR] case. Petitioner requests that enclosure (4) be returned to his OMPF. Finally, Petitioner requests the Board to remove the 25 January 2021 counseling entry, enclosure (5), from his OMPF. Petitioner contends the entry is erroneous as it contains personal health information and that the information regarding his inpatient treatment is already documented in his medical record. Enclosure (1)

## CONCLUSION

Upon review and consideration of all the evidence of record, the Board determined that Petitioner's request warrants partial relief. The Board noted that Petitioner's 14 December 2020 counseling for his deficiencies as the Battalion Unit Training Coordinator remains in his OMPF, but his rebuttal has been unjustly removed. The Board found that Petitioner correctly submitted a rebuttal, enclosure (4), in accordance with reference (b), and found that enclosure (4) was erroneously removed. The Board concluded that enclosure (4) shall be added back to Petitioner's OMPF.

The Board also noted that enclosure (5) is not written and filed in accordance with the spirit and intent of reference (b) in that Petitioner's completion of the alcohol treatment program was already documented in Petitioner's record elsewhere, and did not require a separate administrative remark in his OMPF. The Board thus concluded that enclosure (5) shall be removed.

With respect to enclosure (2), the Board noted that the [REDACTED] County Sheriff's Department confirmed Petitioner was detained, and not arrested, per enclosure (7). Consequently, the Board found that some wording in the counseling entry was erroneous. Specifically, the Board found

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that in the second paragraph of the entry “arrest” and “you were arrested” should be redacted and the entry shall state:

“According to the civilian police report case # [REDACTED], obtained by [REDACTED], from [REDACTED] County Sheriff’s Department for battery on your spouse on or about 11 October 2020 in [REDACTED], [REDACTED]”

The Board, however, determined that enclosure (2) should not be expunged. The Board noted that an alcohol-related incident did occur and counseling was warranted per reference (b). Moreover, the Commanding Officer had the authority to issue the counseling based on information from the [REDACTED] County Sheriff’s Department report that Petitioner was detained for assault on his spouse and that he was heavily intoxicated at the time of the incident. In addition, the Board noted that Petitioner was able to provide a rebuttal to the counseling entry that is included in his OMPF. As the Board determined that the counseling entry was issued in accordance with reference (b), the Board found removal of the counseling entry is not warranted as the modification to the entry corrects the error. The Board thus concluded that enclosure (2), as modified, shall remain in Petitioner’s record.

#### RECOMMENDATION

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

Petitioner’s naval record be corrected by modifying enclosure (2), Petitioner’s 2 December 2020 counseling entry, by redacting the verbiage “arrest” and “you were arrested” from the second paragraph so that the second paragraph states:

“According to the civilian police report case # [REDACTED], obtained by MCB [REDACTED], from [REDACTED] County Sheriff’s Department, for battery on your spouse on or about 11 October 2020 in [REDACTED].”

Petitioner’s naval record be corrected by removing enclosure (5), Petitioner’s 25 January 2021 counseling entry.

Petitioner’s naval record be corrected by adding enclosure (4), Petitioner’s rebuttal to the 14 December 2020 counseling entry.

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

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[REDACTED]

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.

3/3/2023

[REDACTED]

Deputy Director

[REDACTED]