



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

██████████
Docket No. 9085-22
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 P1070.12K (IRAM)
(c) MCO 1900.16 (MARCORSEPMAN)

Encl: (1) DD Form 149 w/enclosures
(2) Administrative Remarks (Page 11) 6105 counseling entry, 30 Apr 20
(3) Notification of Separation Proceedings, 19 May 20
(4) ██████████, Recommendation for Administrative Discharge, 19 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 enclosure (2).

2. The Board, consisting of ██████████, ██████████, and ██████████ reviewed Petitioner's allegations of error and injustice on 3 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 30 April 2020 Petitioner received a (Page 11) 6105 counseling entry for testing positive for oxymorphone during a random command urinalysis. Petitioner did not have a valid prescription for oxymorphone at the time. Enclosure (2).

b. On 19 May 2020 Petitioner was notified that he was being processed for administrative separation by reason of misconduct for drug abuse. Enclosure (3).

c. On 19 October 2020 Commanding General, ██████ Marine Expeditionary Force ██████(MEF) directed Petitioner be retained in the Marine Corps on active duty. Enclosure (4).

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

d. Petitioner contends that the administrative separation board dismissed all charges and approved him for retention. He further contends that the counseling entry states that he is in a legal status which is inaccurate. Finally, he claims that the counseling entry is hindering him for promotion and retention.

CONCLUSION

Upon review and consideration of all the evidence of record the Board determined that Petitioner's request warrants partial relief. Regarding Petitioner's claim that the administrative separation board dismissed all charges, the Board determined that in Petitioner's case, administrative separation processing was required due to his positive urinalysis on 19 March 2020. The Board also noted that issuance of the contested 6105 counseling entry was warranted, within the limits of the commanding officer's authority, and properly documented in Petitioner's official military personnel file (OMPF) in accordance with references (b) and (c).

The Board noted, however, that reference (b) states that Page 11 entries shall not be made which concern administrative discharge if they do not, upon final review, result in discharge or reduction. The Board determined that, because the CG, [REDACTED] MEF directed Petitioner's retention on active duty, the 6105 counseling entry is no longer valid as written and filed. The Board determined, however, that Petitioner failed to provide sufficient evidence demonstrating the existence of a probable material error or injustice warranting removal of the 6105 counseling entry.

In regards to Petitioner's claim that the counseling entry is hindering his opportunity for promotion and retention, the Board determined that this claim was not supported by sufficient evidence.

The Board thus concluded that, with the exception of the paragraph in the counseling entry regarding processing for administrative separation, the contested material in Petitioner's OMPF is not in error or unjust, and shall remain in Petitioner's OMPF.

RECOMMENDATION

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

Petitioner's naval record be corrected by redacting the 6105 counseling entry, enclosure (2), by removing the following statement:

"I understand that I am being processed for the following judicial or adverse administrative action: administrative separation for drug abuse per MARCORSEPMAN paragraph 6210.5"

No further relief be granted.

That 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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
XXX XX [REDACTED] / [REDACTED] USMC

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.

1/30/2023

[REDACTED]

Deputy Director

Signed by [REDACTED]