

Docket No. 9422-22 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 w/CH 2 (c) MCO P1400.32D (d) MCO P1070.12K w/CH 2

Encl: (1) DD Form 149 w/enclosures

- (2) Administrative Remarks (Page 11) 6105 Counseling Entry, 29 Oct 21
- (3) Administrative Remarks (Page 11) Entry, 29 Oct 21
- (4) Administrative Remarks (Page 11) Entry, 16 Nov 21
- (5) Senior Member Administrative Discharge Board Report, 16 Feb 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 removing enclosures (2), (3), and (4).

2. The Board, consisting of **Constant and Sectors**, and **Constant and Sectors**, and **Constant and Sectors**, 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 29 October 2021, pursuant to paragraph 6105 of reference (b), Petitioner was issued a 6105 counseling entry for drug abuse. The entry also notified Petitioner that he is being processed for administrative separation. On the same date, Petitioner was issued a page 11 entry notifying him that he is not eligible for promotion to E-4 due to his pending administrative separation. Petitioner acknowledged the entries and elected not to submit a statement. Enclosures (2) and (3).

b. On 16 November 2021, pursuant to reference (c), Petitioner was issued a page 11 entry notifying him that he is eligible but not recommended for promotion to corporal for the month of

## Subj: REVIEW OF NAVAL RECORD OF XXX XX USMC

November 2021 due to pending legal actions. Petitioner acknowledged the entry and elected not to submit a statement. Enclosure (4).

c. On 16 February 2022, Petitioner's administrative separation board unanimously found that the preponderance of evidence does not prove any of the acts or omissions alleged and recommended Petitioner's retention on active duty. Enclosure (5).

d. Petitioner contends that the counseling entries should be removed because the administrative separation could not prove any of the acts or omissions alleged and he was retained on active duty. Petitioner claims that he did not receive non-judicial punishment and the counseling entries are hindering him from being able to reenlist. Enclosure (1).

## CONCLUSION

Upon review and consideration of all the evidence of record the Board determined that Petitioner's request warrants partial relief.

In this regard, the Board noted that Petitioner's administrative separation board recommended that he be retained on active duty. The Board, however, determined that an administrative separation board's purpose is to determine a Marine's suitability to continue to serve on active duty and is not convened to prove one's guilt or innocence. The Board also determined that the commanding officer's determination to issue the 6105 counseling entry and process Petitioner for administrative separation was based upon a preponderance of evidence. The Board also noted that according to reference (d), do not make entries on page 11 which concern administrative discharge, if they do not, upon final review, result in discharge. The Board noted, too, that reference (d) requires commanders to record all confirmed incidents of illegal drug involvement in the member's service record. Pursuant to reference (d), the Board concluded that Petitioner's counseling entries should be redacted by removing any mention of his administrative separation proceedings.

## RECOMMENDATION

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

Petitioner's naval record be corrected by redacting enclosure (2) by removing the statements:

"You are hereby being administratively separated from the United States Marine Corps." And, "I understand that I am being processed for administrative separation due to my drug abuse."

Petitioner's naval record be corrected by redacting enclosure (3) by removing the statement:

"due to my pending administrative separation."

That part of the Petitioner's request for corrective action that exceeds the foregoing be denied.

Subj: REVIEW OF NAVAL RECORD OF XXX-XX-USMC

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 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.

