



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

[REDACTED]
Docket No. 1096-23
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]

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

Encl: (1) DD Form 149 w/enclosures
(2) Administrative Remarks (Page 11) counseling entry of 13 Jun 22
(3) Administrative Remarks (Page 11) entry of 13 Sep 22
(4) MCTFS personal information dtd 22 Mar 23

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 his naval record be corrected by removing enclosures (2) and (3).

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 23 March 2023, and pursuant to its regulations, determined 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, found as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.

b. On 13 June 2022, Petitioner was issued an Administrative Remarks (Page 11) entry counseling him regarding several instances of physically abusing his spouse. The entry states Petitioner was being processed for administrative separation, with an Other Than Honorable characterization being the least favorable he could receive. By signing the Page 11, Petitioner acknowledged he was being processed for administrative separation. The entry indicates Petitioner chose to make a rebuttal statement to be filed with the Page 11 in his Official Military Personnel File (OMPF) but the rebuttal statement is not in Petitioner's OMPF. See enclosure (2).

c. On 13 September 2022, Petitioner was issued a Page 11 entry stating he was "eligible but not recommended for promotion to the rank of Gunnery Sergeant for 12 months due to [his] suspended administrative separation on 27 July 2022 MCO 1900.16 CH2." Petitioner

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acknowledged the entry and elected not to make a written rebuttal statement. Enclosure (3) was submitted by Petitioner but was not found within Petitioner's OMPF.

d. Petitioner's OMPF does not contain administrative separation documentation nor did he submit any of the documentation. However, enclosure (4) indicates Petitioner is still on active duty and does not have a pending separation date.

e. Reference (b) does not authorize Page 11 entries which concern administrative discharge proceedings if the proceedings, upon final review, do not result in discharge.

CONCLUSION

Upon review and consideration of all the evidence, the Board concluded Petitioner's request warrants partial relief. In this regard, the Board determined the counseling entry at enclosure (2), which meets the requirements of reference (b), creates a permanent record of matters Petitioner's commanding officer deemed significant enough to document and concluded there was insufficient evidence of an error or injustice warranting removal. The Board noted the administrative separation process is not intended as, nor does it function as, a method to overturn or invalidate other procedures or administrative actions. It is conceivable and permissible that the administrative separation and counseling processes, which have separate considerations and purposes, may arrive at different findings. The Board concluded the administrative separation determination does not impact the validity of the Page 11 counseling entry at enclosure (2).

However, the Board, noting the counseling entry at enclosure (2) stated Petitioner was being processed for administrative separation but that he was ultimately retained, determined the statement regarding administrative separation processing was not in compliance with reference (b). The Board concluded it was in the interest of justice to redact the reference to Petitioner's administrative separation processing from the Page 11 counseling entry at enclosure (2).

The Board further determined it was error for enclosure (3) to be in Petitioner's record because the referenced Marine Corps Order is the wrong promotion restriction authority and concluded that if the Page 11 resides in Petitioner's OMPF, it should be removed.

RECOMMENDATION

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

Petitioner's naval record be corrected by redacting the following language from the Administrative Remarks (Page 11) counseling entry of 13 June 2022 at enclosure (2): "You are being processed for administrative separation. The least favorable characterization which you may receive is Other Than Honorable. Although the Commanding Officer, [REDACTED] will make the determination of characterization." Further, the sentence "If you are separated understand that failure to complete my enlistment contract with an honorable characterization of service may preclude my eligibility for benefits..." should be corrected to remove the reference to being separated and the sentence should begin with "Failure to complete..."

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Petitioner's naval record be corrected by removing enclosure (3), if the Page 11 entry resides in Petitioner's OMPF.

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 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.

4/14/2023

[REDACTED]