



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

█
Docket No. 3489-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █
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Ref: (a) Title 10 U.S.C. § 1552
(b) MCO 1900.16 w/CH 2
(c) MCO 1610.7

Encl: (1) DD Form 149 w/attachments
(2) NAVMC 118(11) Administrative Remarks, 19 Aug 22
(3) Rebuttal to the 19 Aug 22 NAVMC 118(11) Administrative Remarks, 24 Aug 22
(4) Fitness report for the reporting period 1 Jul 22 to 19 Aug 22

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), (3), and (4).

2. The Board, consisting of █ reviewed Petitioner's allegations of error and injustice on 11 May 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, found that, before applying to this Board, Petitioner did not exhausted all administrative remedies available under existing law and regulations within the Department of the Navy; specifically, the removal of enclosure (4). The Board made the following findings:

a. On 19 August 2022, Petitioner was issued an Administrative Remarks 6105 (page 11) entry for attempting to improperly influence a witness in an investigation. Petitioner acknowledged the entry. In his statement, Petitioner denied asking the witness to lie or bend the truth. Enclosures (2) and (3).

b. On 7 October 2022, Petitioner received an adverse, not observe, fitness report for receiving a counseling entry for attempting to improperly influence a witness in an investigation and for being relieved of his duties as the Platoon Sergeant. In his rebuttal, Petitioner noted that a complaint alleged that he created a hostile work environment. When asked about the investigation by a witness, he stressed that the witness should tell the truth and advised the witness to give a completely honest and unbiased statement. The Third Officer Sighter (TOS)

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

noted that the witness stated something different took place in the conversation between him and Petitioner. Either way, the TOS determined that this becomes a “he said, he said” case. The Senior Marine involved should understand what he should and should not do in light of being the subject of an investigation. The TOS also noted that some of the things discussed between the Petitioner, the TOS and Sergeant Major could be seen as offensive, and absolutely rub people the wrong way, thus creating a hostile work environment. Petitioner was counseled on this and understood their position. The TOS concluded that the adverse nature of the report is substantiated. Enclosure (4).

c. In his application, Petitioner contends there was a two-week push to complete all training in preparation for deployment. During this time half of his Marines failed to complete a few of the tasks, specifically, they found it difficult to shave, show up on time or show up to work at all, pass fitness test, maintain weight, and they abused privileges under the guise of COVID. After many negative counselings, friction developed between him and the Marines. Petitioner claims that the allegations that he created a hostile work environment were unsubstantiated. He received the counseling entry based solely on a single statement with no further evidence. He claims that he asked the investigating officer if he could provide witnesses. One witness agreed, the witness had questions and he answered basic questions the witness had about the investigation. Enclosure (1).

CONCLUSION

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

The Board noted Petitioner’s counseling entry and determined that the entry was written and issued according to reference (b). The Board also noted Petitioner’s adverse fitness report, specifically, the comments by the Third Officer Sighter, indicating that this was a case of “he said, he said”. The Board determined that a case of “he said, he said” was insufficient to support a basis for issuing the counseling entry. Conversely, because Petitioner was relieved from his duties as the Platoon Sergeant, his performance related adversity forming a separate basis for adversity according to reference (c). The Board concluded that enclosures (2) and (3) should be removed.

The Board determined that the Performance Evaluation Review Board (PERB) is the initial action agency for fitness report appeals, therefore, Petitioner must exhaust his administrative remedies by submitting a request to remove his fitness report for the reporting period 1 July 2022 to 19 August 2022 to the PERB according to the Marine Corps Performance Evaluation Appeals Manual.

RECOMMENDATION

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

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

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

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

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 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.

5/26/2023

[REDACTED]

Deputy Director

[REDACTED]