



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

██████████
Docket No. 3490-23
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 P1400.32D W/CH1-2 (ENLPROMMAN)
(c) MCO 1070/12K (IRAM)
(d) MCO 1900.16 (MARCORSEPMAN)

Encl: (1) DD Form 149 w/enclosures
(2) Administrative Remarks (Page 11) 6105 counseling entry dtd 6 May 20
(3) Administrative Remarks (Page 11) promotion restriction entry dtd 6 May 20
(4) CO, ██████ ltr dtd 18 Dec 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 his Administrative Remarks (Page 11) 6105 counseling entry and Page 11 entry, both dated 6 May 2020, from his official military personnel file (OMPF).

2. The Board, consisting of ██████████, ██████████, and ██████████, reviewed Petitioner's allegations of error and injustice on 9 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 the 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, finds as follows:

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

b. On 6 May 2020, the Petitioner received nonjudicial punishment (NJP) for violation of Articles 93, 128, and 134 of the Uniform Code of Military Justice, for cruelty and maltreatment, assault, and disorderly conduct/drunkenness, respectively. Petitioner was reduced in rank to corporal and did not appeal the punishment. As a result, Petitioner was also issued enclosures (2) and (3), documenting his NJP and restricting his promotion to sergeant for a period of 6 months in accordance with reference (b), respectively. Petitioner acknowledged and signed both entries, and chose not to submit statements.

c. On 18 December 2020, the commanding officer (CO), ██████ Battalion, ██████ Marines, set aside the NJP, restoring the Petitioner's rights, privileges, and property. The CO determined that there

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was a clear injustice due to a disproportionate amount of punishment awarded, given the other Marine involved was administratively separated and produced embellished statements and stories. The CO noted that the Petitioner was held accountable for his actions and performed in an exemplary manner since the NJP was held. Enclosure (4).

d. Petitioner contends that since his NJP was set aside and removed by the CO, it should make the Page 11 entries invalid.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an error warranting partial relief. In this regard, the Board determined that enclosures (2) and (3) were issued in accordance with references (c) and (d) based on the facts the CO had at the time of issuance. The Board noted the CO's action to set aside the NJP; however, determined that the basis for the action was not as a result of the Petitioner's innocence, but his subsequent performance and behavior along with the disproportionate nature of his punishment. The Board, therefore, determined that the Page 11 counseling entry remains valid except for the portion referencing the NJP. As such, the Board concluded that the language referencing "battalion level NJP" shall be removed from enclosure (2). With regards to enclosure (3), the Board determined that the entry is invalid since the Petitioner's rank to sergeant was reinstated, making the entry incorrect. As such, the Board concluded that the Page 11 promotion restriction entry shall be removed from 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 following language from enclosure (2), Petitioner's Page 11 6105 counseling entry dated 6 May 2020:

"...Battalion level NJP..."

Petitioner's naval record be corrected by removing enclosure (3), Petitioner's Page 11 promotion restriction entry dated 6 May 2020:

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.

No further changes be made to Petitioner's 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

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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.

6/2/2023

[REDACTED]
Executive Director

Signed by: [REDACTED]