



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

[REDACTED]
Docket No. 4807-23
Ref: Signature Date

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

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

Ref: (a) 10 U.S.C. § 1552
(b) MCO 1900.16 (MARCORPSEPSMAN)

Encl: (1) DD Form 149 w/enclosures
(2) Administrative Remarks 6105 (Page 11) counseling of 14 Feb 23
(3) Petitioner Page 11 Rebuttal (undated)
(4) Administrative Remarks (Page 11) counseling of 27 Feb 23
(5) Commander, [REDACTED] ltr [REDACTED] 21 Apr 23

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 that his naval record be corrected by removing his 14 February 2023 Administrative Remarks (Page 11) counseling entry.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 20 June 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 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 14 February 2023, Petitioner was issued an Administrative Remarks 6105 (Page 11) counseling entry for Violation of Article 92 of the Uniformed Code of Military Justice (UCMJ), by sexually harassing another Marine, a violation of the Prohibited Activities and Conduct order. In his rebuttal, Petitioner clarifies the reason that he did not initially write a statement for the Investigating Officer (IO) was because a lawyer at base legal told him anything he said would be misconstrued into something else, even with supporting evidence. Moreover, he admits that between August and November of 2022, he had an inappropriate relationship with his

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noncommissioned officer in charge. In support of his claim, he provided a substantial amount of text messages to prove that the relationship was consensual. Enclosures (2) and (3).

c. On 27 February 2023, Petitioner was issued a promotion-restriction counseling entry which states he was eligible but not recommended for promotion to Corporal for the 3rd Quarter, Fiscal Year (FY) 23 (April, May, June) due to recent or pending legal action. Although Petitioner acknowledged the counseling entry and elected to submit a statement, no written rebuttal was found in his official record. Enclosure (4).

d. On 21 April 2023, Commander, [REDACTED] endorsed the Command Investigation regarding the complaint of prohibited activities and conduct. He explains that when the Petitioner submitted his rebuttal statement, and additional evidence not previously in the record or known to the command, the investigation was reopened. Based upon newly obtained evidence, the investigating officer concluded that the allegations of sexual harassment against the Petitioner were unsubstantiated. The IO found that the parties engaged in an extended personal relationship, which included extensive communications of a sexual nature, extending through November, the period in which the alleged harassment occurred. The Commander concurred with the IO's findings and determined that the adverse material would be removed from the Petitioner's service record. Enclosure (5).

e. Petitioner contends the Investigation later concluded that the initial violation of Article 92 of the Uniformed Code of Military Justice was later proven unsubstantiated based upon his rebuttal statement and additional evidence. He also emphasized the Commander, [REDACTED] endorsement letter which states that adverse materials will be removed from his official record.

CONCLUSION

Upon review and consideration of all the evidence, the Board concluded that Petitioner's request warrants the requested relief. The Board, relying on the Commanders endorsement letter, determined it was in the interest of justice to remove the Page 11 entry and the associated rebuttal at enclosures (2) and (3).

The Board also determined that enclosure (4), the 27 February 2023 Administrative Remarks counseling entry, was presumably issued because of the IO's initial findings of a violation of Article 92. Since the misconduct was later proven unsubstantiated, the Board determined that enclosure (4) is unjust and should be removed from the Petitioner's record.

RECOMMENDATION

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

Petitioner's naval record be corrected by removing the 14 February 2023 Administrative Remarks 6105 (Page 11) counseling entry and associated rebuttal. Enclosures (2) and (3).

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[REDACTED]

Petitioner's naval record be corrected by removing enclosure (4), the 27 February 2023 Administrative Remarks counseling entry.

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 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 the reference, has been approved by the Board on behalf of the Secretary of the Navy.

7/5/2023

[REDACTED]