



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

[REDACTED]
Docket No. 6295-23
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) Title 10 U.S.C. § 1552
(b) MCO P1070.12K (IRAM)
(c) MCO 1900.16 (MARCORSEPMAN)

Encl: (1) DD Form 149 w/enclosures
(2) DD Form 3114, DoD Uniform Command Disposition Report, 1 Dec 22
(3) Administrative Remarks (Page 11) 6105 counseling entry, 20 Dec 22
(4) Administrative Remarks (Page 11) Entry, 23 Feb 23
(5) Senior Member Administrative Discharge Board Report, 17 May 23
(6) CO, [REDACTED] ltr 1400 CG, 21 Jul 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 that his naval record be corrected to remove enclosures (2) and (3).

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 8 August 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 1 December 2022, Petitioner was notified that he was being accused of allegations of Violating Article 120, Sexual Assault of the Uniform Code of Military Justice. Enclosure (2).

b. On 20 December 2022, Petitioner received an administrative remarks 6105 (Page 11) counseling entry for allegation of Article 120, Sexual Assault Committed on or about 2 September 2022. The counseling entry also notified Petitioner that he was being processed for Administrative Separation. Petitioner acknowledged the entry and elected not to submit a written rebuttal. Enclosure (3).

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c. On 23 February 2023, Petitioner received a promotion restriction counseling entry stating that he was eligible but not recommended for promotion to Sergeant for the second quarter of 2023 due to recent or pending legal action from the Noncommissioned Officer Promotion Panel held on 16 February 2023. Petitioner acknowledged the entry and elected not to submit a written rebuttal. Enclosure (4).

d. On 17 May 2023, 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).

e. On 21 July 2023, Petitioner's current Commanding Officer (CO) favorably endorsed his request for the removal of two Page 11 counseling entries from his official record. He states that although the unit to which the Petitioner belonged followed appropriate procedures, based upon the unfounded accusations, the Page 11 counseling entries would not have been entered into his official record. Enclosure (6).

f. Petitioner contends that the Page 11 entries should be removed because the administrative separation found no basis for separation and recommended retention.

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. Therefore, pursuant to reference (b), the Board concluded that enclosure (3) should be modified by redacting any mention of his administrative separation proceedings.

Notwithstanding the recommended corrective action below, the Board determined the two counseling entries should not be removed from Petitioner's record. The Board concluded that it was the commanding officer's determination to issue the counseling entries and process Petitioner for administrative separation was based upon a preponderance of evidence. Moreover, 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. Finally, the Board was not swayed by Petitioner's CO endorsement letter since he was not the issuing CO of the counseling entries and his letter did not provide sufficient evidence that the alleged action did not occur. The Board thus concluded that insufficient evidence of error or injustice exists to remove the counseling entries from Petitioner's Official Military Personnel File.

RECOMMENDATION

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

Petitioner's naval record be corrected by redacting enclosure (3) by removing the statements:
"I understand that I am being processed for the following judicial or adverse administrative

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action: Administrative separation.”

That no further changes be made to Petitioner’s naval record.

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.

8/11/2023

[REDACTED]