

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]
XXX XX [REDACTED] USMC

c. In his application, Petitioner contends that the 5 October 2022 counseling entry is adversely affecting his recommendations for reenlistment. Petitioner claims that his request for retention will require a Commanding General waiver of reenlistment due to the counseling entry. Petitioner also contends that the counseling entry is erroneous and should be removed based upon the Administrative Discharge Board's findings. Enclosure (1).

CONCLUSION

Upon review and consideration of all the evidence of record, the Board found the existence of an injustice warranting relief.

The Board noted that the Petitioner was processed for administrative separation due to sexual assault, but was retained on active duty. The Board also noted that reference (b) states, "Do not make entries on page 11 which concern administrative discharge, or competency review proceedings if they do not, upon final review, result in discharge or reduction." The Board noted, too, that Petitioner was counseled for committing sexual assault and found the statement declarative in nature, overtly harsh, and prejudicial without a statement to support the declaration or justification for the finding (i.e. command investigation). Moreover, Petitioner's Commanding Officer found him qualified and eligible for promotion with his original date of rank. The Board thus determined that the both counseling entries should be removed.

In making this finding, the Board determined non-recommendation was based on Petitioner being processed for administrative separation and the Administrative Discharge Board's finding negated the basis for the entry. Further, regarding the 6105 counseling entry, the Board determined that redacting the entry was insufficient given the findings by the Administrative Discharge Board and the unjust declarative nature of the counseling entry.

RECOMMENDATION

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

Petitioner's naval record be corrected by removing enclosure (2), Petitioner's 5 October 2022 counseling entries.

Any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record, and 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

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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.

10/23/2023

[REDACTED]