

Docket No. 7329-23 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 P1070.12K (IRAM) (c) MCO P1400.32D (ENLPROMMAN)
- Encl: (1) DD Form 149 w/enclosures
  (2) NAVMC 118(11) Administrative Remarks (Page 11) of 5 Oct 22
  (3) H&S Bn, Administrative Discharge Board Report of 1 Mar 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 by removing enclosure (2).

2. The Board, consisting of **Constant**, **Constant**, and **Constant**, reviewed Petitioner's allegations of error and injustice on 26 September 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 5 October 2022, pursuant to paragraph 6105 of the Marine Corps Separation and Retirement Manual (MARCOSEPMAN) Petitioner was issued a counseling entry for violating Uniform Code of Military Justice (UCMJ), Article 120 (Sexual Assault) by knowingly and wrongfully causing sexual contact without the victim's consent. Petitioner acknowledged the entry and elected to submit a rebuttal; however, no rebuttal was submitted. On the same date, Petitioner was issued a counseling entry notifying him that he is eligible but not recommended for promotion to corporal due to pending administrative separation. Enclosure (2).

b. On 1 March 2023, Petitioner's Administrative Discharge Board unanimously found that the preponderance of the evidence does not prove any of the acts or omissions alleged and recommended Petitioner's retention in the Marine Corps. Enclosure (3).

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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

