



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

█
Docket No. 8669-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF █
█ USMC

Ref: (a) Title 10 U.S.C. § 1552
(b) Manual for Courts-Martial (2019 Ed.), Part V
(c) MCO P1070.12K (IRAM)
(d) MCO 1900.16 (MARCORSEPMAN)

Encl: (1) DD Form 149 w/enclosures
(2) Petitioner's NAVMC 10132 UPB entry of 23 Dec 21
(3) Administrative Remarks (Page 11) 6105 counseling and Promotion Restriction counseling entries of 23 Dec 21
(4) CO, █ MCD, Set Aside, ltr 5812 CO of 6 Jul 23
(5) JPL memo 1070 JPL of 11 Dec 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 his Unit Punishment Book (UPB) which documents his Non-judicial Punishment (NJP) and restoration of all rights and associated privileges.

2. The Board, consisting of █, and █, reviewed Petitioner's allegations of error and injustice on 16 January 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 23 December 2021, the Commanding Officer (CO) imposed NJP for violation of Article 113, Uniform Code of Military Justice (UCMJ). Petitioner received forfeiture of half months pay (\$1727.00) for two months and extra punitive duties for 45 days, suspended for a period of 6 months, at which time, unless sooner vacated. Enclosure (2).

c. On 23 December 2021, the Commanding Officer issued Petitioner a counseling entry concerning his NJP for violation of Article 113, Drunken or reckless operation of a vehicle,

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UCMJ as well as a Promotion Restriction counseling notifying him that he was eligible but not recommended for promotion due to his recent NJP for violation of Article 113. Petitioner signed both counseling entries and did not elect to submit a written rebuttal. See Enclosure (3).

d. On 6 July 2023, the CO, set aside Petitioner's NJP proceedings and restored all rights, privileges, and property affected by virtue of the punishment. As rational, the CO determined the punishment to be excessive and that Petitioner had sustained superior personal and professional performance since the imposition of NJP. See Enclosure (4).

e. The advisory opinion (AO), furnished by Headquarters, Marine Corps (JPL), recommended the requested relief be granted. The AO noted the NJP was properly set aside and that pursuant to reference (b), the CO [REDACTED] MCD had the authority to set aside the NJP and made the appropriate findings based on an additional review of the evidence and facts and that unusual circumstances warranted setting aside the NJP outside of the typical four-month window. Thus, the AO recommended the UPB be removed from Petitioner's record.

f. Petitioner contends that the NJP should be removed from his official record based upon the CO's decision to set aside his NJP.

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 relying upon the CO's set aside letter, as well as the AO provided by JPL, determined that Petitioner's CO properly set aside his NJP. Therefore, the Board concluded that the UPB and CO Set Aside Letter should be removed from Petitioner's official record. However, the Board was not convinced that Petitioner was exonerated of all wrongdoing based upon the CO's determination that the punishment imposed was excessive and determined Petitioner provided insufficient evidence that the alleged act did not occur. Thus, the Board determined the CO's determination to issue the counseling entries at enclosure (3) for violation of Article 113 was based upon a preponderance of evidence. However, because the NJP was set aside, the Board determined that it was in error to have any mention of NJP in the counseling entries. Thus, the Board concluded that the counseling entries remain valid, with the exception of any mention of the NJP, and shall remain in Petitioner's OMPF.

RECOMMENDATION

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

Petitioner's naval record be corrected by removing enclosures (2) and (4).

Petitioner's naval record be corrected by redacting the Administrative Remarks (6105) Page 11 counseling entry at enclosure (3) by removing the following statement:

"You were subject to and found guilty at a District Level Nonjudicial Punishment for..."

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[REDACTED] USMC

Petitioner's naval record be corrected by redacting the Promotion Restriction counseling entry at enclosure (3) by removing the following statement:

"...due to my recent NJP..."

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.

That no further relief be granted.

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.

2/2/2024

