



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

██████████  
Docket No. 9954-23  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████, USN, XXX-XX-██████████

Ref: (a) Title 10 U.S.C. § 1552  
(b) Manual for Courts-Martial (2019 Ed.), Part V  
(c) JAGINST 5800.7

Encl: (1) DD Form 149 w/enclosures  
(2) NAVPERS 1626/7, Report & Disposition of Offenses, 14 Sept 21  
(3) NAVPERS 1070/613, Booker Rights, 6 Oct 21  
(4) NAVPERS 1070/613, CO NJP, 6 Oct 21  
(5) NAVPERS 1070/613, Administrative Counseling and Warning, 6 Oct 21  
(6) Petitioner Evaluation Report & Counseling, 16 Nov 20 to 15 Nov 21  
(7) Senior Mbr, Record of Proceedings, 14 Dec 31  
(8) Petitioner Evaluation Report & Counseling, 16 Nov 21 to 15 May 22  
(9) Advisory Opinion by PERS-00J ltr, 31 Jan 24

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 all documents from his official record which reference his 6 October 2021 nonjudicial punishment (NJP).

2. The Board, consisting of ██████████, ██████████, and ██████████ reviewed Petitioner's allegations of error and injustice on 13 February 2024, 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 14 September 2021, the Commanding Officer (CO) notified Petitioner that he was being charged with violation of Article 112a, Uniform Code of Military Justice (UCMJ). The CO held Captain's Mast on 6 October 2021. Enclosure (2).

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c. On 6 October 2021, the CO found Petitioner guilty in violation of Article 112a. However, no punishment was awarded, and Petitioner was only notified that the CO was proceeding with mandatory administrative separation proceedings. Petitioner also received a counseling entry acknowledging that Petitioner received his Notification and Election of Rights and spoke to a military lawyer. Next, Petitioner was notified via counseling entry that he was being processed for administrative separation. Petitioner refused to sign any of the counseling entries as indicated on 23 November 2021. Enclosures (3) through (5).

d. On 15 November 2021, Petitioner received a Periodic/Regular Evaluation Report and Counseling (Eval) which marked him below standards in military bearing/character based upon the CO NJP held on 6 October 2021 in which Petitioner was found guilty of violation of Article 112a, UCMJ. It further indicated that Petitioner was not recommended for promotion or retention and that mentioned that an administrative separation board was pending. Enclosure (6).

e. On 14 December 2021, the administrative separation board adjourned and recommended by a unanimous vote that Petitioner be retained. Enclosure (7).

f. On 15 May 2022, Petitioner received a Special/Regular Evaluation Report and Counseling (Eval) to reinstate his advancement and retention recommendations. Petitioner signed the Eval and indicated that he did not intend to submit a statement. Enclosure (8).

g. Petitioner contends that pursuant to reference (b), "if no punishment is awarded in Article 15, UCMJ proceeding in effect [it] is the same as if the charges were dismissed at the proceeding. No Section 0119 Record of NJP will be made in the member's service record. The fact that member went to an Article 15, UCMJ proceeding may not be referenced in members record." Thus, Petitioner contends that the NJP and all associated documents should be removed from his official record because no punishment was awarded.

h. The advisory opinion (AO), furnished by the Office of Legal Counsel (PERS-00J), recommends that the requested relief be granted. The AO noted that although Petitioner has not exhausted available administrative remedies, Petitioner has met his burden to overcome the presumption of regularity attached to the official actions of the Navy. Further, the AO states that the command should not have made any record entries to document the NJP once it was determined that no punishment was being awarded, yet a review of Petitioner's official record shows that there are entries within his record pertaining to this NJP. Finally, the AO noted that pursuant to reference (c), an award of no punishment should be treated as a dismissal of charges, and no such record entries should be made. Therefore, based on the evidence at hand, there is basis to grant relief in this case. Enclosure (9).

## CONCLUSION

Upon review and consideration of all the evidence of record, the Board determined that Petitioner's request warrants relief.

The Board, relying upon the AO provided by PERS-00J as well as Petitioner's official record, determined the NJP was included in his official record in error as no punishment was awarded.

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Therefore, the Board concluded that any records mentioning the 6 October 2021 NJP should be removed from Petitioner's official record. The Board thus concluded that Petitioner's naval record be corrected by removing Enclosures (2) through (6) and Enclosure (8) from his official record as detailed below.

#### RECOMMENDATION

In view of the above, the Board directs Petitioner's naval record be corrected by the following corrective actions:

1. Removal of NAVPERS 1626/7, Report & Disposition of Offenses of 6 October 2021 at Enclosure (2).
2. Removal of NAVPERS 1070/613, Booker Rights of 6 October 2021 at Enclosure (3).
3. Removal of NAVPERS 1070/613, CO NJP of 6 October 2021 at Enclosure (4).
4. Removal of NAVPERS 1070/613, Administrative Counseling and Warning of 6 October 2021 at Enclosure (5).
5. Removal of Petitioner's Evaluation Report & Counseling Record for the reporting period 16 Nov 20 to 15 Nov 21 at Enclosure (6).
6. Removal of Petitioner's Evaluation Report & Counseling Record for the reporting period 16 Nov 21 to 15 May 22 at Enclosure (8).

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.

3/5/2024

[REDACTED]