



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

█
Docket No. 10537-23
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) MCO P1070.12K (IRAM)
(c) MCO 1900.16 (MARCORSEPMAN)

Encl: (1) DD Form 149 w/enclosures
(2) CO, █ ltr 1900 █ of 4 Oct 22
(3) Petitioner, █ ltr 1900 █ of 4 Oct 22
(4) Administrative Remarks (Page 11) 6105 counseling and Promotion Restriction counseling entries of 5 Oct 22
(5) Petitioner Acknowledgement of Rights ltr 1910 of 6 Oct 22
(6) Senior Member, Administrative Discharge Board Report of 18 Oct 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 all adverse documents regarding his administrative separation board.

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 4 October 2022, Petitioner was notified by the Commanding Officer that he intended to recommend to the Commanding General that he be discharged pursuant to paragraph 6210.6 of reference (b) by reason of misconduct, commission of a serious offense. Petitioner acknowledged receipt of notification of separation proceedings. See Enclosures (2) and (3).

c. On 5 October 2022, Petitioner received an administrative remarks 6105 (Page 11) counseling entry for alleged violation of Article 120, Sexual Assault of the Uniform Code of

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Military Justice (UCMJ). The counseling entry also notified Petitioner that he was being processed for Administrative Separation. Subsequently, Petitioner also received a Promotion Restriction counseling notifying him that he was eligible but not recommended for promotion to corporal due to his pending Administrative Separation. Petitioner signed both entries and, although he elected to submit a rebuttal, he did not. See Enclosure (4).

d. On 6 October 2022, Petitioner signed his acknowledgement of rights to be exercised or waived during separation proceedings. See Enclosure (5).

e. On 18 October 2023, Petitioner's administrative separation board unanimously found that a preponderance of evidence does not prove any of the acts or omissions alleged and recommended Petitioner's retention in the Marine Corps. See Enclosure (6).

f. Petitioner contends that the all adverse paperwork related to the misconduct considered by the administrative separation board should be removed from his record based upon the administrative separation board's finding of 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 found no misconduct and recommended he be retained on active duty. However, the Board was not swayed by Petitioner's claim that he was exonerated of all wrongdoing based upon the outcome of the administrative separation board. Further, the Board noted Petitioner provided insufficient evidence that the alleged act did not occur. Moreover, the Board noted an administrative separation board's purpose is to determine a Marine's suitability to continue to serve on active duty and is not to prove a member's guilt or innocence. The Board also determined that the commanding officer's determination to issue the counseling entries and process Petitioner for administrative separation was based upon a preponderance of evidence. Therefore, the Board determined enclosure (4) should remain in Petitioner's record.

However, the Board noted that according to reference (b), comments concerning administrative discharge are prohibited from counseling entries, if they do not, upon final review, result in discharge. Therefore, the Board concluded that enclosure (4) should be redacted by removing any mention of his administrative separation proceedings.

RECOMMENDATION

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

Petitioner's naval record be corrected by redacting the Administrative Remarks (6105) Page 11 counseling entry at enclosure (4) by removing the following statement:

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“I understand I am being processed for the following judicial or adverse administrative actions: Administrative Separation due to Misconduct: Commission of a Serious Offense par 6210.6, MCP 1900.16”

Petitioner’s naval record be corrected by redacting the Promotion Restriction Page 11 counseling entry at enclosure (4) by removing the following statement:

“due to my pending Administrative Separation”

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.

2/6/2024

