



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

[REDACTED]
Docket No: 3180-16

OCT 17 2017

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

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

Ref: (a) 10 U.S.C. §1552

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Administrative Remarks entry of 6 Oct 14
(4) Record of Conviction by Court Martial (1070) of 9 Jan 15
(5) Administrative Remarks entry of 18 Feb 15
(6) Administrative Remarks entry of 18 Feb 15
(7) HQMC memo 1070 JPL of 9 Feb 17

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the Marine Corps, filed enclosure (1) with this Board requesting to remove from his Official Military Personnel File (OMPF) Administrative Remarks (6105) entry dated 18 February 2015, Administrative Remarks entry dated 18 February 2015 and Record of Conviction by Court Martial (1070) dated 9 January 2015.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 28 July 2017 and, pursuant to its regulations, determined that partial corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of enclosures (1) through (7), relevant portions of Petitioner's 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. Petitioner received an Administrative Remarks (6105) counseling entry dated 6 October 2014 for demonstrating shortfalls in military attribute obedience, moral fitness individual character, influence on others and general bearing. The Petitioner violated the Command General Order Liberty Policy by leaving base after liberty curfew hours and fraternizing with several subordinates. The Petitioner declined to provide a rebuttal statement. See enclosure (3).

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c. Petitioner was summoned to a Summary Court Martial for violation of Article 92 (violation of a lawful order) and Article 134 (fraternization) of the Uniform Code of Military Justice (UCMJ). The Record of Conviction by Court Martial entry was not signed by the Petitioner. The Record of Conviction by Court Martial entry was signed "By Direction." See enclosure (4).

d. Petitioner received an Administrative Remarks (6105) entry dated 18 February 2015 for violation of Article 92 and Article 134 of the UCMJ. The Administrative Remarks (6105) entry was not signed by the Petitioner or the Commanding Officer. Moreover, the Petitioner was unavailable to elect or to provide a rebuttal statement. See enclosure (5).

e. Petitioner received an Administrative Remarks entry dated 18 February 2015 which provided non-recommendation to the rank of Staff Sergeant due to his Summary Court Martial. The Administrative Remarks entry was not signed by the Petitioner; furthermore, the entry indicates the following: "SNM unavailable for signature." See enclosure (6).

f. Headquarters, U.S. Marine Corps furnished a partial favorable Advisory Opinion (AO) regarding the Petitioner's request. The AO recommended the removal of the Administrative Remarks (6105) and Administrative Remarks entries both dated 18 February 2015. Administrative Remarks (6105) entry was not acknowledged or signed by the Petitioner or the Commanding Officer. The Administrative Remarks entry which provides non-recommendation for promotion to the rank of Staff Sergeant, did not afford the Petitioner an opportunity to provide a rebuttal statement. The AO did not recommend removal of the Summary Court-Martial since the Board for Correction of Naval Records (BCNR) does not have the authority to remove records of conviction by Courts-Martial. See enclosure (7).

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board voted to remove the Administrative Remarks (6105) dated 6 October 2014 and Administrative Remarks entries dated 18 February 2015. In this regard, the Board determined that the Petitioner should receive partial relief since there was evidence to suggest that both Administrative Remarks entries dated 18 February 2015 were issued to him without his knowledge. Moreover, the Petitioner was not afforded the opportunity to provide a rebuttal statement for either Administrative Remarks entries. In regards to the Summary Court-Martial (NAVMC 118(13)) entry, the Board has no authority to consider contentions pertaining to improprieties in court martial and must limit its review to determining whether the sentence should be modified as a matter of clemency.

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

RECOMMENDATION:

Petitioner's naval record be corrected by removing Administrative Remarks (6105) entry dated 18 February 2015 from Petitioner's OMPF.

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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.

Recorder

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 partial corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

Executive Director