



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

[REDACTED]
Docket No: 6151-17

DEC 28 2017

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

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

Ref: (a) 10 U.S.C. § 1552
(b) MCO P1610.7

Encl: (1) DD Form 149
(2) CO, Headquarters and Service Battalion ltr of 13 Jan 17
(3) HQMC MMRP-13/PERB Memo of 17 Jul 17

1. Pursuant to the provisions of reference (a), Petitioner, a commissioned officer of the Marine Corps, filed enclosure (1) with this Board requesting that his naval record be corrected by removing his fitness reports covering the period from 20070101 to 20070815 and 20060701 to 20061231 from his Official Military Personnel File (OMPF). Enclosures (1) through (3) apply.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 11 October 2017 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 Petitioner's naval records, and applicable statutes, regulations and policies. In addition, the Board considered the action taken by Headquarters Marine Corps (MMRP-13/PERB) Memorandum dated 17 July 2017.

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. The record reflects that on 8 August 2007, the Petitioner received nonjudicial punishment (NJP) as a result he was issued a Commandant of the Marine Corps (DC) fitness report for the reporting period 20070101 to 20070815. Petitioner was also issued an Annual (AN) fitness report for the period 20060701 to 20061231.

c. Petitioner contends that the NJP he received which rendered the fitness report for the period 20070101 to 20070815 adverse, has been set aside. He further contends that there is no record of his NJP in the Marine Corps Total Force System (MCTFS) and there is not a Unit Punishment Book or Administrative Remarks (Page 11) entry filed in his OMPF. Regarding the fitness

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report for the period 20060701 to 20061231, he contends that the Reporting Senior (RS) made comments that are insufficient.

d. Enclosure (2) request that the Petitioner's NJP be set aside and that all rights, privileges, and property affected by virtue of the execution of his NJP punishment be restored.

e. Enclosure (3) states in part, regarding the fitness report for the period 20120717 to 20130630, enclosure (2) lacked the authority to set aside the petitioner's NJP. The contested fitness report was not found to be in error or unjust. The NJP on which it was based on, was not set aside by the proper authority. Regarding the fitness report for the period 20060701 – 20061231, the Reporting Senior (RS) was also the Reporting Officer on the Petitioner's prior (observed) three-month report, the assumption is that the RS was well aware of the Petitioner's mode of operation and felt justified in rendering the contested fitness report as an observed report. There is no indication that the RS was biased in any way towards the Petitioner because of his removal as an Air Traffic Controller and the petitioner failed to substantiate his argument.

CONCLUSION:

Upon review and consideration of all the evidence of record, and in light of enclosure (2), that the Petitioner's requests warrants partial relief. In this regard, the Board concludes that the fitness report covering the period 20070101 to 20070815 should be removed from the Petitioner's OMPF. The Board determined that there is an injustice to have the fitness report remain in the Petitioner's OMPF. The Board concluded that because there is no other reference of the Petitioner's NJP within his OMPF the fitness report should be removed.

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

RECOMMENDATION:

That Petitioner's naval record be corrected by removing therefrom the following officer fitness report and related material.

Date of report
20070910

Reporting senior
[REDACTED]

Period of report
From: 20070101 to 20070815

That there be inserted in the Petitioner's naval record a memorandum in place of the removed report, containing appropriate identifying data concerning the report; that such memorandum state that the report has been removed by order of the Secretary of the Navy in accordance with the provisions of federal law and may not be made available to selection boards and other reviewing authorities; and that such boards may not conjecture or draw any influences as to the nature of the report.

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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.

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

[REDACTED]
Executive Director