



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

[REDACTED]
Docket No: 7114-17

MAR 04 2018

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

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

Ref: (a) 10 U.S.C. §1552
(b) MCO P1070.12K w/ch 1 (IRAM)

Encl: (1) DD Form 149 w/o attachments
(2) Administrative Remarks (Page 11) counseling entry dtd 7 Nov 16
(3) Petitioner's rebuttal statement dtd 14 Nov 16

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted Marine, filed enclosure (1) with this Board requesting removal of an Administrative Remarks (Page 11) counseling entry dated 7 November 2016 from his Official Military Personnel File (OMPF). He impliedly requested the corresponding rebuttal statement also be removed from his OMPF.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 30 January 2018 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.

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 7 November 2016, Petitioner was counseled after allegedly committing a sexual offense against a sailor assigned to his ship. The counseling entry also advised Petitioner that he was being processed for administrative separation. Petitioner submitted a rebuttal statement, denying, in part, the misconduct. See enclosures (2) and (3).

c. On 28 March 2017, an administrative separation board determined the preponderance of the evidence did not support a finding of misconduct and recommended retention. As a result, Petitioner was retained on active duty.

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d. Per reference (b), Page 11 entries are not authorized which concern administrative discharge proceedings if, after final review, they do not result in an administrative discharge.

CONCLUSION

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action.

The Board determined it in error, and therefore an injustice for the contested counseling entry and corresponding rebuttal statement to remain after Petitioner was retained.

RECOMMENDATION

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

Petitioner's naval record be corrected by removing enclosure (2), the Page 11 entry dated 7 November 2016 from his OMPF.

Petitioner's naval record be corrected by removing enclosure (3), the rebuttal statement dated 14 November 2016 from his OMPF.

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.

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