



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

██████████
Docket No. 8670-23
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 5354.1F (PAC)
(c) MCO 1070.12K (IRAM)
(d) MCO 1900.16 (MARCORSEPMAN)

Encl: (1) DD Form 149 w/enclosures
(2) Administrative Remarks (Page 11) 6105 entry, 12 Jul 23
(3) Rebuttal to Encl (2), Petitioner ltr 1000-34 ██████████, 17 Jul 23
(4) CO, ██████████ ltr 1000 S-1, 25 Jul 23
(5) CO, ██████████ ltr 1331 CO, 12 Oct 23
(6) HQMC ltr 1070 JPL, 4 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 an Administrative Remarks (Page 11) 6105 counseling entry.

2. The Board, consisting of ██████████, and ██████████ reviewed Petitioner's allegations of error and injustice on 23 January 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. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. On 12 July 2023, Petitioner was issued a 6105 counseling for violation of Article 134 of the Uniform Code of Military Justice (UCMJ). Petitioner signed the entry and elected to submit a written rebuttal. Enclosures (2) and (3).

b. On 25 July 2023, in response to the rebuttal, Petitioner's Commanding Officer (CO) issued a Memorandum for the Record, stating that the command did not use anything Petitioner said as evidence in determining his wrongdoing and subsequent paperwork, and that his violation of Article 134, UCMJ was determined from other evidence. Enclosure (4).

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c. On 12 October 2023, the CO requested removal of the counseling from Petitioner's Official Military Personnel File (OMPF), noting that after verifying with Legal, a Prohibited Activities and Conduct (PAC) investigation was required but not completed, and that the counseling was erroneously entered into Petitioner's OMPF. Enclosure (5).

d. Petitioner contends the counseling should be removed because it was given after a preliminary inquiry command investigation and that throughout the investigation he was never read his Article 31(b) rights, nor did he waive his rights from the appointed Investigating Officer. Petitioner also provided an advocacy letter from the CO who issued the counseling. Enclosures (1) and (5).

e. The Advisory Opinion (AO) furnished by Headquarters, Marine Corps, Military Personnel Law Branch (JPL) recommends the requested relief be approved. The AO noted that failure to adhere to reference (b) does not necessarily constitute a material error or injustice or impact the command's disposition of Petitioner's alleged misconduct. Also, the AO notes the Petitioner's CO was within his authority to formally counsel Petitioner pursuant to references (c) and (d). However, because the CO chose to handle Petitioner's conduct in accordance with reference (b), it was premature to formally counsel Petitioner prior to completing the required investigation. Petitioner's rights in reference (b) attached upon initiation of the PAC process. Thus, the AO determined entry of the counseling into Petitioner's OMPF failed to consider any appeal Petitioner was allowed in accordance with reference (b) and constituted an error. Enclosure (6).

CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an error and injustice warranting relief. In this regard, the Board relied upon the recommendation of the AO as well as the CO's letter favorably endorsing the removal of the counseling as erroneous. Moreover, the Board noted that although Petitioner did not specifically request the removal of the associated rebuttal or the CO's Memorandum for the Record, those documents should also be removed from the Petitioner's OMPF. The Board thus concluded that the contested counseling, rebuttal, and Memorandum for the Record shall be removed from Petitioner's OMPF.

RECOMMENDATION

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

Petitioner's naval record be corrected by removing enclosures (2) through (4).

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.

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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.

2/28/2024

