



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

██████████
Docket No. 9148-23
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████
XXX XX ██████████ USMC

Ref: (a) 10 U.S.C. § 1552
(b) MCO 1900.16 (Ch. 2), Separation and Retirement Manual (Short Title: MARCORSEPMAN), 15 February 2019
(c) MCO P1070.12K (Ch. 1), Marine Corps Individual Records Administration Manual (Short Title: IRAM), 14 July 2000

Encl: (1) DD Form 149 w/enclosures
(2) HQMC Memo 1070 JPL, subj: Application for Correction in the case of [Petitioner], 6 December 2023
(3) NAVMC 118(11), Administrative Remarks (1070), 20 October 2022
(4) NAVMC 118(11), Administrative Remarks (1070), 19 October 2022 (photograph)
(5) Petitioner's Statement, 27 October 2022 (Rebuttal to Counseling)
(6) ██████████ Memo 1900 CO, subj: Notification of Separation Proceedings (Board Case), 1 November 2022
(7) ██████████ Memo 1910 ADSEP, subj: Administrative Discharge Board Report: Findings and Recommendations in the case of [Petitioner], 12 April 2023
(8) Petitioner's Counsel's Memo, subj: Response to Board for Correction of Naval Records Advisory Opinion, NR20230009148, 11 January 2024

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, hereinafter referred to as the Board, requesting the removal of two counseling entries, dated 19 and 20 October 2022, along with any other associated adverse material, from her naval record.¹

2. The Board reviewed Petitioner's allegations of error or injustice on 23 January 2024 and, pursuant to its governing regulations, found an injustice warranting the corrective action indicated below. Documentary material considered by the Board included the enclosures; relevant portions of Petitioner's naval record; and applicable statutes, regulations, and policies.

3. Having reviewed all of the evidence of record pertaining to Petitioner's allegations of error or injustice, the Board found as follows:

¹ Only the 20 October 2022 counseling entry appears in Petitioner's naval record. The 19 October 2022 entry was not filed in her naval record because it contained an erroneous reference.

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a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulation within the Department of the Navy.

b. On or about 21 June 2022, a command investigation (CI) found that Petitioner knowingly allowed junior Marines to use illegal drugs at her residence and that she had a sexual relationship with a junior Marine. See enclosure (2).

c. On 20 October 2022, Petitioner was formally counseled in writing for “allowing junior Marines to use her residence, knowing the junior Marines were using illegal drugs at her house without stopping/reporting them, and having a sexual relationship with a junior Marine,” in violation of Article 92, Uniform Code of Military Justice (UCMJ).² She indicated her intent to make a statement in response to this counseling. See enclosure (3).

d. On 27 October 2022, Petitioner made the following statement in response to the counseling referenced in paragraph 3c above:

Throughout my time in the Marine Corps, I have always strived to uphold the high standards expected of Marines in my grade. I have not been afforded the opportunity to review the investigation that is alleged to form the basis for these allegations, but plan on contesting these allegations when given the opportunity. Moving forward, I will continue to uphold the standards expected of a Marine in my grade and respectfully request the opportunity to continue serving for as long as possible.

See enclosure (5).

e. By memorandum dated 1 November 2022, Petitioner was formally notified that she was being processed for administrative separation for misconduct due to commission of a serious offense. The factual basis stated for this action was the misconduct referenced in the counseling statement discussed in paragraph 3c above. See enclosure (6).

f. On 12 April 2023, an administrative separation board convened to consider Petitioner’s case, and unanimously found that the preponderance of the evidence did not support any of the acts or omissions alleged in the notification memorandum. See enclosure (7).

g. In June 2023, Petitioner was passed over for promotion to Gunnery Sergeant. See enclosure (1).

h. Petitioner, through counsel, asserts that the subject counseling documenting alleged violations of Article 92, UCMJ, should be removed from her naval record because the administrative separation board determined that the preponderance of the evidence did not support the allegations. She stated that she met the junior Marine (a Corporal) through social media, and began an intimate relationship with him without knowing that he was a junior

² Petitioner received a counseling statement on 19 October 2022 which was identical to the one received on 20 October 2022 except that it erroneously cited to paragraph 6210.5 (Drug Abuse) of reference (b) as the regulatory authority for her proposed administrative separation. See enclosure (4). This earlier version is not present in Petitioner’s naval record.

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Marine, and that she ended the relationship shortly after learning of his status. When she was later scheduled to deploy to [REDACTED] in 2022, she asked the same Corporal and another Sergeant in the unit if they could look after her on-base residence and collect her mail.³ S In March 2022, Petitioner received text messages from the Sergeant with photographs of the interior of her home in disarray. She immediately confronted the Corporal about using her home as his own.⁴ Two days before this confrontation, the Corporal had come under criminal investigation when marijuana was found in his car. During the course of this investigation, the Corporal falsely reported that Petitioner gave him permission to use her home to smoke marijuana.⁵ Petitioner's application is supported by numerous character references from senior non-commissioned officers attesting to her integrity, judgment, and reliability. See enclosure (1).

i. By memorandum dated 6 December 2023, the Military Personnel Law Branch of Headquarters, Marine Corps (JPL), provided an advisory opinion (AO) for the Board's consideration, recommending that Petitioner's request be denied. Specifically, JPL noted that formal counseling in the Marine Corps is governed by reference (c), which grants commanders with wide discretion to use this administrative mechanism to address deficiencies, and that Petitioner's commander issued the counseling in question based upon the preponderance of the evidence after the completion of the CI. Accordingly, JPL opined that the decision of Petitioner's commander to issue the counseling in question is entitled to the presumption of regularity. See enclosure (2).

j. By memorandum dated 11 January 2024, Petitioner, through counsel, provided a response to the AO referenced in paragraph 3i above. In response to the AO's conclusion that the administrative separation board's finding did not undermine the factual basis for the counseling (i.e., the investigation upon which it was based), Petitioner's counsel noted that the language in the counseling entry was identical to the language provided in the administrative separation notification memorandum. He further noted that at the time that the counseling was administered, Petitioner's command did not have a full understanding of all of the circumstances surrounding the allegations made against Petitioner. Specifically, the command did not have the statement from the other Marine who was allegedly using marijuana in Petitioner's residence, or the text messages between Petitioner, the Sergeant, and the Corporal. With regard to the allegation that Petitioner fraternized with the Corporal, Petitioner's counsel argued that the offense of fraternization requires the alleged offender to know of the military status of the person with whom they were in a relationship, and there was no evidence that Petitioner entered into the relationship with the Corporal knowing that he was a junior Marine. See enclosure (8).

³ Petitioner stated that she asked the Corporal to help because the Sergeant was schedule to have surgery at some point during her deployment and she was unsure of his availability to continue visiting her home.

⁴ Petitioner provided screenshots of this text conversation which confirms that she did, in fact, confront the Corporal about using her home in this manner.

⁵ Petitioner's counsel reports that the other junior Marine whom Petitioner was alleged to have allowed to use her on-base residence to smoke marijuana denied that the Corporal ever told him that Petitioner gave permission for them to use marijuana at her residence.

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CONCLUSION:

Upon careful review and consideration of all of the evidence of record, the Board found the existence of an injustice warranting relief.

The Board found no error in the issuance of the adverse counseling in question. Petitioner has provided no evidence that the investigation which substantiated allegations that she allowed two junior Marines to smoke marijuana in her residence, or that she engaged in a sexual relationship with a junior Marine, was not supported by the evidence. To the contrary, the testimony offered by the Corporal in the context of his own criminal investigation provided a sufficient factual basis for this conclusion. While Petitioner's counsel accurately states that there was no evidence gathered during the CI to corroborate this claim, there was also no evidence to refute it. While Petitioner was certainly within her rights to remain silent during the CI, she cannot legitimately complain about the conclusions which were reached based on the evidence absent her input.

With the substantiated allegations from the CI, which were supported by the evidence available, it was appropriate for Petitioner's command to administer the counseling in question. Rule for Courts-Martial 306 provides that allegations of offenses should be disposed of in a timely manner at the lowest appropriate level of disposition amongst the list provided. Amongst these listed levels of disposition, it was reasonable for Petitioner's command to determine that the counseling administered was the lower appropriate level of disposition for the allegations substantiated by the CI. Such counseling is governed in the Marine Corps by reference (c), which provides that the Marine Corps "will file correspondence containing adverse material that the Marine reported on has had the opportunity to contest, explain, or rebut, whether at a personal hearing or by statement, without additional referral to the individual."⁶ In this case, Petitioner was provided the opportunity to contest, explain, or rebut the content of her counseling. Contrary to the claim made by her attorney, however, she failed to do so. Rather, she stated only that she "plan[ned] on contesting these allegations when given the opportunity." That statement was her opportunity to contest the allegations, and she did not avail herself of it despite the fact that she apparently had ample evidence on hand to do so given her success at the subsequent administrative separation board and the evidence that she has provided to this Board. The administrative separation board hearing is not the forum to dispute the validity of an adverse counseling; it serves an entirely different purpose. Accordingly, the favorable findings of the administrative separation board do not invalidate the counseling upon which those proceedings were based.

Although the Board found no error in the filing of the adverse counseling in Petitioner's naval record, it did find an injustice in the continuing presence of this material in her record. It is apparent from the evidence that Petitioner did not actually permit junior Marines to use marijuana in her house. The screenshots of the text messages demonstrated conclusively that the Corporal took liberties in Petitioner's residence far beyond what Petitioner intended, and that he lacked credibility. As Petitioner obviously did not even want the Corporal to be watching television in her residence in her absence, it is reasonable to assume that she also did not want him to be smoking marijuana in the house. The Board also found credible Petitioner's claim that

⁶ See paragraph 1000.4c(2)(a).

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she did not know the Corporal to be a fellow Marine when she entered into an intimate relationship with him, and that she ended the relationship shortly after learning of his status. The aforementioned text messages make apparent that the relationship was over, and the administrative separation board apparently found this claim to be credible. The character references provided by Petitioner attesting to her integrity and good judgment also provided a strong basis to conclude that Petitioner would not have knowingly entered into such a relation and to believe her claims regarding the initiation and termination of the relationship. As the evidence of record strongly suggests that Petitioner did not knowingly have a sexual relationship with a junior Marine and did not allow junior Marines to use marijuana in her house, the Board found an injustice in the continuing presence of such adverse information in her naval record. This adverse information, which more than likely is not accurate, would undoubtedly have a detrimental effect upon Petitioner's career. Given that she so capably refuted these allegations at the administrative separation board hearing and in her present application, the Board presumes that Petitioner either received bad advice or was confused regarding the process when she failed to refute them in her response to the counseling. Accordingly, the Board determined that the subject counseling, and Petitioner's response thereto, should be removed from Petitioner's naval record in the interests of justice.

RECOMMENDATION:

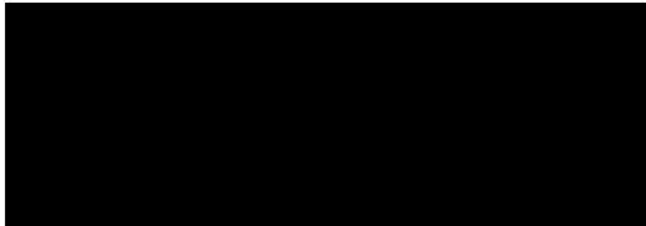
In view of the above, the Board recommends that the following corrective action be taken on Petitioner's naval record:

That the NAVMC 118(11) (Administrative Remarks), dated 20 October 2022, and Petitioner's response thereto, dated 27 October 2022, be removed from Petitioner's naval record.

That Petitioner's naval record be scrubbed for any other materials or entries discussing, referencing, or reacting to the allegations contained in said counseling, and that all such materials or entries be removed. This includes, but is not limited to, all information systems or database entries that reference or discuss the expunged material or her administrative separation proceedings.

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 titled matter.
5. The foregoing action of the Board is submitted for your review and action.

3/5/2024



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ASSISTANT GENERAL COUNSEL (MANPOWER AND RESERVE AFFAIRS) DECISION:

X Board Recommendation Approved (Grant Relief – I concur with the Board’s conclusions and therefore direct the relief recommended above.)

— Board Recommendation Disapproved (Deny Relief – I concur with the Board’s conclusion that there was no error in the issuance of the counseling in question, but disagree with the conclusion that the continuing presence of this counseling in her record constitutes an injustice. Petitioner was provided the opportunity to refute the allegations contained in the counseling at the time that it was issued, but did not avail herself of that opportunity. Accordingly, I find no injustice in the presence of this adverse material, which was unrefuted at the time, in Petitioner’s naval record, and direct that no corrective action be taken on Petitioner’s naval record.

[REDACTED]