



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

█
Docket No. 331-24
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
(c) JAGINST 5800.7G

Encl: (1) DD Form 149 w/attachments
(2) NAVMC 10132, Unit Punishment Book of 7 Jan 22
(3) NAVMC 118(11), Administrative Remarks 6105 (Page 11) and Promotion
Restriction counseling entries of 7 Jan 22
(4) GC Fitness Report for the period 11 May 21 to 7 Jan 22
(5) U.S. District Court, █ of 22 Jun 22
(6) Base Magistrate Email of 25 Oct 23
(7) PMO Military Police Report
(8) Armed Forces Traffic Ticket No. █
(9) CO, █ ltr 1040 █ of 1 Dec 23
(10) HQMC Memo 1070 JPL of 1 Apr 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 the 7 January 2022, Unit Punishment Book (UPB) documenting his Non-Judicial Punishment (NJP) as well as removal of the Administrative Remarks (6105) Page 11 counseling entry, and associated Page 11 promotion restriction counseling entry of the same date.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 16 April 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 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, found 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, with the exception of his

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fitness report for the reporting period 11 May 2021 to 7 January 2022. Therefore, the Board only considered Petitioner's request to remove his NJP and counseling entries.

b. On 7 January 2022, the Commanding Officer imposed NJP on the Petitioner for violation of Articles 92 and 113 of the Uniform Code of Military Justice (UCMJ), in that on or about 19 November 2021, Petitioner failed to obey a lawful general order by driving a vehicle under the influence of alcohol that resulted in a traffic collision. Petitioner was reduced to corporal (E-4), and restricted and assigned extra punitive duties for a period of 45 days, and forfeiture of \$1452 per month for two months. The forfeiture of pay and restriction/extra punitive duties were suspended for six months, unless sooner vacated. See Enclosure (2).

c. As a result of the NJP, Petitioner also received an Administrative Remarks 6105 (Page 11) counseling entry citing his recent NJP in accordance with reference (b). He also received a Promotion Restriction counseling entry stating that he was being placed on a promotion restriction status to E-5 due to his recent NJP for violation of the UCMJ, Articles 92 and 113 for a period of 12 months. Petitioner signed both counseling entries and did not elect to submit a written rebuttal. Subsequently, Petitioner also received an adverse fitness report for the period ending 7 January 2022 for DUI while driving a junior Marine on liberty and the subsequent Battalion level NJP. Petitioner signed the fitness report and acknowledged his behavior was unbecoming for a sergeant of Marines. See Enclosures (3) and (4).

d. On 7 June 2022, the United States District Court, [REDACTED], dismissed without prejudice the charge for Driving Under the Influence (DUI). See Enclosure (5).

e. On 23 October 2023, the Base Magistrate dismissed Petitioner's case stating that, at the time of Petitioner's Traffic Court hearing, the Provost Marshall Office (PMO) was unable to provide the Standard Incident Complaint Form which would have outlined the facts and circumstances of the alleged offense and restored his driving privileges. See Enclosures (6) through (8).

f. On 1 December 2023, the Commanding Officer (CO) determined Petitioner's NJP and all rights, privileges, and property affected by virtue of execution of this punishment shall be set aside pursuant to reference (c). The CO determined that at the time, he made the lawful decision to impose punishment for violations of Article 92 and 113. Since this punishment, Petitioner has attended two court dates. One with the Base Magistrate and the other at the Superior Court of [REDACTED] and both cases were dismissed due to inadequate reporting. He further added the Petitioner provided new evidence, which was brought to his attention after imposing punishment. Enclosure (9).

g. Petitioner contends that, based upon the CO's decision to set aside the NJP as well as the Base Magistrate's dismissal along with the Superior Court of [REDACTED] disposition, the punishment is unjust because he was never found guilty of the offense.

h. An advisory opinion (AO), from Headquarters, Marine Corps, Military Personnel Law Branch (JPL), was furnished for the Board's consideration recommending that Petitioner's

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request to remove the UPB from his official record be granted because his NJP was properly set aside. See Enclosure (10).

CONCLUSION

Upon review and consideration of all the evidence of record, the Board found sufficient evidence of an error or injustice warranting relief. In this regard, the Board substantially concurred with the AO recommendation to remove the Unit Punishment Book based upon the CO's decision to set aside Petitioner's NJP. The Board also determined that the Administrative Remarks (Page 11) 6105 and associated Promotion Restriction counseling entries are no longer supported by the evidence and should also be removed from the Petitioner's record.

Regarding enclosure (4), Petitioner's fitness report ending on 7 January 2022, the Board determined Petitioner must first exhaust his administrative remedies through the Marine Corps Performance Evaluation Review Board.

RECOMMENDATION

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

Petitioner's naval record be corrected by removing enclosures (2) and (3).

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.

No further relief be granted.

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.

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 Regulations, 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.

5/8/2024

[REDACTED]
Executive Director

Signed by: [REDACTED] 8