



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

█  
Docket No. 1537-24  
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) Manual for Courts-Martial (2023 ed.)

Encl: (1) DD Form 149 w/attachments  
(2) NAVMC 10132 Unit Punishment Book, 6 Jan 23  
(3) NAVMC 118(11) Administrative Remarks 6105, 6 Jan [23]<sup>1</sup>  
(4) NAVMC 118(11) Administrative Remarks, Non-Rec (Page 11), 6 Jan [23]<sup>2</sup>  
(5) Petitioner's Rebuttal to 6105 of 6 Jan 23, 13 Jan 23  
(6) CG, █ ltr 5800 CG, Appeal of Imposition of NJP, 25 Jan 23  
(7) Fitness report for the reporting period 21 Jan 23 to 25 Jan 23  
(8) CMC (MM) ltr 1450/2 MMPR-2, Revocation of Selection from the FY23 First Sergeant/Master Sergeant Selection Board, 21 Apr 23  
(9) CO, █ ltr 5812 CO, Setting Aside NJP, 5 Feb 24  
(10) Advisory opinion by HQMC Memo 1070 JPL, 24 Apr 24

1. Pursuant to the provisions of the reference, 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 enclosures (2) through (8).

2. The Board, consisting of █, █, and █ reviewed Petitioner's allegations of error and injustice on 4 June 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. Before applying to this Board, Petitioner did not exhaust all administrative remedies available under existing law and regulations within the Department of the Navy regarding his request to remove his fitness report and reinstatement of his promotion. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds the following:

a. On 6 January 2023, Petitioner was received non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Articles 107 and 92 by submitting false

<sup>1</sup> The NAVMC 118(11) Administrative Remarks 6105 appears to be dated as 6 Jan 22 vice 2023.

<sup>2</sup> The NAVMC 118(11) Administrative Remarks, Non-Rec (Page 11) appears to be dated as 6 Jan 22 vice 2023.

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documentation to the Personal Administration Center to have the Global War on Terrorism Expeditionary (GWOT-E) medal and Armed Forces Service medal added to his awards record. Petitioner also submitted a false written statement to the Investigating Officer and violated a lawful order by his Commanding Officer (CO) to refrain from submitting documentation for the GWOT-E medal. Enclosure (2).

b. On 6 January 2023, Petitioner was issued a 6105 counseling entry documenting the NJP and Article 107 and 92, UCMJ violations. On the same date, Petitioner was notified that he is not recommend for promotion to the next higher grade due to receiving NJP. Petitioner acknowledged the entries and elected to submit a statement. Enclosures (3) through (5).

c. On 25 January 2023, the Commanding General, [REDACTED] denied Petitioner's appeal and found the punishment just and proportionate. Enclosure (6).

d. Petitioner received an adverse fitness report for the reporting period 21 January 2023 to 25 January 2023 for receiving disciplinary action. Enclosure (7).

e. On 21 April 2023, Headquarters Marine Corps, Manpower Management Division informed Petitioner his selection to master sergeant was revoked due to his NJP and Page 11 entry. Enclosure (8).

f. In correspondence dated 5 February 2024, Petitioner's CO set aside the NJP. As justification, he determined that under all the circumstance of the case, the punishment awarded was a clear injustice. Enclosure (9).

g. In his petition, Petitioner contends the correction should be made because the convening authority directed that the punishment be set aside and further directed the removal of enclosures (2) through (5) and any adverse material. Enclosure (1).

h. In an advisory opinion (AO) provided for the Board's consideration, the Military Personnel Law Branch (JPL) recommended the Board grant Petitioner's request, in part. The AO noted that the commander who imposes NJP, or a successor in command, has authority to set aside an NJP. In this case, the AO determined the NJP was properly set aside consistent with reference (b). Moreover, the CO determined setting aside the NJP was appropriate based on an additional review of the evidence and facts, and that unusual circumstances warranted setting aside the NJP outside of the typical, four-month window. The AO also recommended removal of Petitioner's 6 January 2023 formal counseling and his related rebuttal to prevent an injustice. The AO also determined Petitioner's request to restore his promotion to master sergeant effective 1 February 2023 is premature because Petitioner has failed to exhaust his administrative remedies by first petitioning the Marine Corps Performance Evaluation Review Board (PERB) for removal of his adverse fitness report. Enclosure (10).

## CONCLUSION

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting partial corrective action. In this regard, the Board noted the correspondence

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from Petitioner's CO setting aside the NJP and determined Petitioner's NJP was properly set aside in compliance with reference (b). The Board also noted that the GWOT-E and Armed Forces Service medals are reflected in Petitioner's award record. Based upon the setting aside of Petitioner's NJP and inclusion of the medals, the Board determined that all documents related to the NJP should be removed.

Notwithstanding the Board's determination that an injustice exists in Petitioner's record, the Board concluded that Petitioner has not yet exhausted his administrative remedies by requesting correction of his fitness report through the PERB. Moreover, Petitioner's request to restore his promotion to master sergeant is premature. Pending the removal of all adverse material, Petitioner may request the Commandant of the Marine Corps reconsider the revocation of his promotion. Therefore, the Board took no action related to those aspects of his request.

#### RECOMMENDATION

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

Petitioner's naval record be corrected by removing enclosures (2) through (6).

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 corrections to Petitioner's naval record.

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.

6/7/2024

[REDACTED]