



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

█  
Docket No. 1798-24  
Ref: Signature Date

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF █  
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Ref: (a) Title 10 U.S.C. § 1552  
(b) MCO 1900.16 (MARCORSEPMAN)  
(c) MCO P1400.32D (ENLPROMMAN)

Encl: (1) DD Form 149 w/enclosures  
(2) DD Form 456, Charge Sheet of 17 Jun 21  
(3) SPCM Certificate of Withdrawal Filing of 29 Nov 21  
(4) NAVMC 118(11) Administrative Remarks (6105) counseling entry of 15 Dec 21  
(5) Petitioner rebuttal of 22 Dec 21  
(6) █ 1 Email of 1 Mar 24  
(7) MCTFS Present Grade Data as of 29 Feb 24  
(8) NAM for the period 21 Dec 20 to 26 Sep 22  
(9) Petitioner's DD-214

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 enclosure (4), the 15 December 2021 Administrative Remarks (6105) Page 11 counseling entry and enclosure (5), his associated rebuttal statement.

2. The Board, consisting of █, reviewed Petitioner's allegations of error and injustice on 12 March 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. 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 regulation within the Department of the Navy.

b. On 17 June 2021, Petitioner was notified that he was being charged with three specifications of Violation of Article 120(d), Abusive Sexual Contact, of the Uniform Code of Military Justice (UCMJ). See Enclosure (2).

c. On 29 November 2021, the Navy Marine Corps Trial Judiciary Eastern Judicial Circuit filed a certificate of withdrawal from Special Court Martial, which indicated that his case was dismissed without prejudice by direction of the convening authority. See Enclosure (3).

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d. On 15 December 2021, pursuant to reference (b), Petitioner was issued an administrative remarks (6105) page 11 entry counseling him for violation of Article 120 (Sexual Assault) for unwanted sexual contact with another servicemember. Petitioner signed the counseling entry and, in his statement, indicated that based upon allegations made by a Lance Corporal charges were preferred against him and that he was later referred to Special Court Martial. Petitioner further states he was offered a plea agreement to accept non-judicial punishment and waive an administrative board and that by accepting the offer it would have shielded him from having to register as a sex offender and would also have allowed him to stay in the Marine Corps. However, he further added that he declined the plea agreement and maintained that he was innocent. Enclosures (4) and (5).

e. On or around May 2022, pursuant to reference (c), Petitioner's command submitted a request to Headquarters, Marine Corps requesting that he be remedially promoted to the rank of corporal with his original date of rank of 1 January 2021. See Enclosures (6) and (7).

f. On 26 September 2022, Petitioner received a Navy and Marine Corps Achievement Medal (NAM) while serving as the Administrative Clerk for [REDACTED] from December 2020 to September 2022. Petitioner was subsequently honorably discharged the same day. See Enclosures (8) and (9).

g. Petitioner contends that the counseling entry is derogative in nature and is potentially stopping him from reenlistment. He further contends that he was told to sign the counseling entry by the Commanding Officer at the time after his court martial was dismissed twice.

## CONCLUSION

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

In this regard, the Board noted that it was the CO's discretionary authority to issue Petitioner the counseling entry at enclosure (4). However, the Board carefully considered Petitioner's contentions and felt the CO's determination to issue the counseling entry was unjust based upon the CA decision to recommend Petitioner for a remedial promotion to the rank of corporal with his original date of rank, as well as the issuance of a personal award for the period in which the alleged act occurred. Ultimately, the Board determined the counseling entry was unjust based upon the aforementioned evidence and thus determined that the counseling entry and associated rebuttal shall be removed from Petitioner's official record.

## RECOMMENDATION

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

Petitioner's naval record be corrected by removing enclosures (4) and (5).

Any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record, and no such entries or material be added to the record in the future. This includes, but is not limited to, all information systems or

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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.

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.

3/26/2024

