



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

██████████
Docket No. 5230-24
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF ██████████
██████████

Ref: (a) Title 10 U.S.C. § 1552
(b) MCO 1610.7B (PESMAN)
(c) Manual for Courts-Martial (2019 Ed.), Part V
(d) MCO 5354.1E (PAC)
(e) MCO 1900.16 (MARCORSEPMAN)
(f) MCO P1070.12K (IRAM)

Encl: (1) DD Form 149 w/enclosures
(2) Petitioner's NAVMC 10132 UPB entry of 31 Mar 21
(3) Administrative Remarks (Page 11) 6105 counseling entry of 31 Mar 21
(4) DC Fitness Report for the reporting period, 1 Jan 21 to 30 Mar 21
(5) CO, ██████████ Set Aside, ltr 5812 CO [Undated]
(6) CO, ██████████ CI of 5000-19 CO of 23 Mar 21

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 all documentation pertaining to Non-judicial Punishment (NJP) imposed on 31 March 2021, restoration of all rights and associated privileges as well as removal of the associated Administrative Remarks (6105) Page 11 counseling entry. Petitioner also requested that his fitness report for the reporting period ending on 30 March 2021 be removed.

2. The Board, consisting of ██████████, 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 the 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. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds the following:

a. On 31 March 2021, pursuant with reference (c), the Commanding Officer (CO) imposed NJP for violation of reference (d), the Prohibited Activities and Conduct (PAC) Order; specifically, violating a lawful general order by witnessing his junior Marines being hazed for not following instructions. As punishment, Petitioner received forfeiture of \$2118 pay per

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month for one month and restriction for 30 days, which was suspended for a period of 6 months, at which time, unless sooner vacated. Petitioner acknowledged his Article 31, UCMJ Rights, accepted NJP, certified that he was given the opportunity to consult with a military lawyer, acknowledged his right to appeal, and elected not to appeal the CO's finding of guilt at NJP. See Enclosure (2).

b. On 31 March 2021, Petitioner was issued a 6105 entry counseling regarding his NJP for violating Article 92, Failed to Obey a Lawful Order, in accordance with references (e) and (f). Petitioner signed the counseling entry and although he elected to submit a rebuttal, none could be located in his official record. Petitioner also received a Commandant of the Marine Corps (DC) directed fitness report marked adverse for disciplinary action. He acknowledged the fitness report and elected not to submit a statement. See Enclosures (3) and (4).

c. In an undated letter, the successor in command set aside Petitioner's NJP proceedings and restored all rights, privileges, and property affected by virtue of the punishment. As rational, the CO determined the imposed punishment to be a clear injustice. Specifically, the CO claimed that Petitioner's rights were prejudiced because he was not read his Article 31b rights on 25 February 2021 prior to making a statement as part of a Command Investigation (CI), where he was reasonably suspected of being involved in a hazing incident. He further claims that Petitioner's statement was the primary evidence cited in his NJP and that it is reasonable to assume that the Investigating Officer (IO) suspected Petitioner of wrongdoing and should have notified him of his Article 31b rights prior to taking his statement. Finally, the CO also contends that the investigation was improper and not done in accordance with reference (d). See Enclosures (5) and (6).

d. Petitioner contends the NJP and associated derogatory material are unjust and should be removed. In this regard, Petitioner asserts that during an investigation into an attempted suicide of a Marine in his unit, he was questioned without having his Article 31b rights read to him which led to the NJP for violation of Article 92, UCMJ.

CONCLUSION

Upon review and consideration of all the evidence of record the Board determined that Petitioner's request warrants partial relief.

In this regard, the Board noted pursuant to reference (c), Petitioner's NJP was properly set aside, therefore, the UPB should be removed. The Board also noted that the CO set aside Petitioner's NJP because his Article 31b rights were not read to him prior to making a statement as part of the CI. The Board, however, determined the CO's underlying basis for issuing the counseling entry remains supported by the evidence irrespective of his decision to set aside the NJP due to a perceived due process error. Therefore, the Board determined Petitioner's evidence is insufficient to remove a properly issued counseling entry. The Board found no evidence or argument in mitigation of Petitioner's misconduct and he provided none. As a result, the Board also determined the counseling entry was properly issued by the CO in accordance with references (e) and (f), and should remain as a matter of record. The Board, thus concluded the

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UPB shall be removed and the associated counseling entry shall be redacted to remove any mention of the NJP.

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. 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 enclosure (2).

Petitioner's naval record be corrected by redacting, "NJP held on 31 Mar 21," from enclosure (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.

That 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 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.

6/16/2024

