



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

█
Docket No. 8603-24
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) Title 10 U.S.C. § 1552
(b) MCO P1400.32D CH2 (MARCORPROMAN, VOL 2, ENLPROM)
(c) MCO 1900.16 (MARCORSEPMAN)
(d) MCO P1070.12K (IRAM)

Encl: (1) DD Form 149 w/enclosures
(2) NAVMC 10132 Unit Punishment Book of 3 Sep 21
(3) NAVMC 118(11) Administrative Remarks 6105 entry of 3 Sept 21
(4) NAVMC 118(11) Administrative Remarks entry of 14 Apr 22
(5) NAVMC 118(11) Administrative Remarks entry of 10 May 22
(6) NAVMC 118(11) Administrative Remarks entry of 19 Apr 23
(7) █ Order of 20 Oct 23
(8) █ of 24 Jun 24
(9) Petitioner's DD Form 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 to remove the non-recommendation for promotion status for the month of April 2022, and reflect he received remedial promotion for the rank of private first class for the month of May 2022, and, if warranted, remedial promotion consideration for lance corporal and corporal.

2. The Board, consisting of █, █, and █, reviewed Petitioner's allegations of error and injustice on 3 September 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, finds 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.

b. On 3 September 2021, Petitioner received non-judicial punishment (NJP) for violation of Articles 113 and 92 of the Uniform Code of Military Justice (UCMJ) for driving a vehicle under

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the influence (DUI) of alcohol with a 0.08% or above blood alcohol content and violating Article 92, UCMJ for operating a vehicle at a speed of 114 mph in a 55 mph posted speed limit zone. As punishment, Petitioner was awarded reduction in rank to E-1, forfeiture of \$892.00 pay per month for 2 months, and 45 days restriction and extra punitive duties. The forfeiture of pay was suspended for six months, unless sooner vacated. See enclosure (2).

c. Subsequently, Petitioner also received an Administrative Remarks (Page 11) counseling entry documenting the NJP and Article 113 and 92, UCMJ violations. On the same date, Petitioner was notified that based upon his recent NJP he was in a promotion restriction status for a period of 6 months. Petitioner signed the entries and elected not to submit a statement. See enclosure (3).

d. On 14 April 2022, Petitioner received a counseling entry notifying him that he was not eligible for promotion for the month of March 2022 due to legal actions for his DUI on 29 June 2021. Next, on 10 May 2022, Petitioner received a counseling entry notifying him that he was not eligible for the months of April, May, and June 2022 due to being on legal hold for an ongoing investigation. Then, on 19 April 2023, Petitioner received a counseling entry notifying him that he was not eligible for promotion for the months of May and June 2023 due to pending legal action. Petitioner signed the counseling entries and elected not to submit a statement. See enclosures (4) through (6).

e. On 20 October 2023, Petitioner entered into a plea agreement with the Superior Court of [REDACTED] for dismissal of the DUI upon completion 12 month probation and attendance in an alcohol education program. See enclosure (7).

f. On 24 June 2024, the Commanding Officer (CO) requested that Petitioner's non-recommendation for promotion for the month of April 2022 be deleted as erroneous and Petitioner be granted remedial promotion for the month of May 2022. The CO explains that, at the end of the promotion restriction period pursuant with reference (b) based upon his recent NJP, Petitioner remained in a promotion restriction, non-recommended status due to pending civilian legal action until 20 October 2023, when the Superior Court of [REDACTED]'s adjudgment where his DUI where charges were dismissed for reckless driving and DUI. See enclosure (8).

g. On 6 February 2024, Petitioner received a counseling entry informing him that he was recommended but not eligible by his CO for reenlistment because of his alcohol related incident while operating a vehicle and he was assigned a reentry (RE) code of RE-3C. Petitioner was honorably discharged from the Marine Corps and transferred to the Reserves on 2 August 2024. See enclosure (9).

h. Petitioner contends that his request for remedial promotion is consistent with the appropriate NJP promotion restriction timeframe. He further contends he should not continue to be punished for court as the DUI was dismissed and changed to reckless driving, and that promotion will help him to continue his career in the Reserves.

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CONCLUSION

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

The Board noted the counseling entry was issued in accordance with references (b) and (c). The Board also noted pursuant with para 1204 of reference (d), in the case where a Marine is awarded punitive reduction (to Pvt through Cpl), the Marine must also serve the full time in grade requirement inclusively before becoming eligible for promotion. In this case, the Board noted, Petitioner was awarded a reduction in grade to Pvt at NJP for DUI. Pursuant with para 1204 of reference (d), Marines will not be promoted within three months of the date awarded NJP, while in a probationary status as a result of a civilian conviction where any portion of the punishment is suspended, and within 12 months of a conviction by military or civilian authorities of DUI or Driving While Intoxicated¹. Thus, the Board determined it was reasonable to conclude Petitioner should have remained in a promotion restriction status for a period of 18 months. Therefore, the Board concluded that it was an injustice that he remained in a promotion restriction status while pending the civilian court's later decision to dismiss the DUI and reduced it to a charge of reckless driving.

As a result, the Board, also relying heavily upon the advocacy letter provided by the CO, concluded that the counseling entry at enclosure (5) to be an injustice and determined the CO recommendations for remedial consideration were consistent with reference (d). However, the Board determined that Headquarters, Marine Corps (MMPB-11) is best suited to determine when Petitioner would have been eligible for promotion to PFC and would also be able to provide further review of his record for any additional promotions that may be warranted as a result of the below relief.

Thus, the Board concluded that Petitioner should be granted removal of enclosure (5) and determined he should also be afforded remedial promotion consideration for PFC and any additional promotions if warranted.

RECOMMENDATION

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

Petitioner's naval record be corrected by removing enclosure (5).

Petitioner be granted remedial promotion consideration to PFC and any other promotions, if warranted.

If required, DFAS shall audit the Petitioner's pay account for payment of back pay to the date of Petitioner's promotion and any lawful monies owed.

¹ For the purposes of this policy, the term "conviction" includes a plea or finding of guilty, a plea of nolo contendere, and all other actions tantamount to a finding of guilty, including adjudication withheld, deferred prosecution, entry into intervention programs, and any similar disposition of charges.

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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.

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. 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.

9/25/2024

