



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

[REDACTED]  
Docket No. 11728-24  
Ref: Signature Date

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
XXX XX [REDACTED] USMC

Ref: (a) 10 U.S.C. § 1552  
(b) Uniform Code of Military Justice (UCMJ)  
(c) MCO P1070.12K (IRAM)  
(d) MCO 1900.16 CH2 (MARCORSEPMAN)

Encl: (1) DD Form 149 w/enclosures  
(2) NAVMC 118(11) dated 22 February 2021  
(3) Fitness Report for the reporting period 1 October 2020 to 29 July 2021  
(4) Petitioner 1336 BJB Memo, subj: Rebuttal ICO [Petitioner], 26 February 2021

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 removal of the Administrative Remarks (Page 11) counseling entry at enclosure (2) and the fitness report at enclosure (3). Additionally, Petitioner requested an Enlisted Remedial Selection Board (ERSB) to consider him for selection to the rank of Master Sergeant.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 13 February 2025 and, pursuant to its regulations, determined 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 regulation within the Department of the Navy for his request to remove the Page 11 entry. However, the Board determined he had not exhausted all administrative remedies regarding his request to remove the contested fitness report or granting of an ESRB.

b. Petitioner was issued enclosure (2), an Administrative Remarks (Page 11) counseling entry, on 22 February 2021, counseling him for violation of Article 92 of reference (b) by failing to obey the COVID-19 mitigation policy for social distancing and face covering. Further, the Page 11 entry noted his "negligence of procedures, lack of awareness, poor judgment, and communication failure contributed to the results of 3 Marines testing positive and 2 Marines having to be isolated in the Supply section for not following the COVID-19 guidance."

Petitioner elected to submit a written statement in rebuttal to the Page 11 entry. In his statement, Petitioner expressed that the negative counseling did not reflect his ability to lead, communicate, or utilize his judgment. He further explained that he “utilized [his] chain of command as directed and communicated [his] concerns in a serious and professional matter.” See enclosures (2) and (4).

c. Upon his transfer, Petitioner was issued a transfer fitness report<sup>1</sup> for the reporting period 1 October 2020 to 29 July 2021. The report indicates Petitioner was the “subject of commendatory material.”

d. Petitioner contends enclosure (2) should be removed because he was “solely appointed” and blamed “for the Marines under his charge contracting COVID-19 which cannot be proven based on lack of evidence and speculative conjecture.” He further contends the command did not submit the original rebuttal statement. Additionally, in support of his request for fitness report removal, Petitioner contends the Reporting Senior, who was the “signatory” of the contested counseling entry, refers to Petitioner as “[h]ighly proficient, detail oriented, and recommended for promotion” in the transfer fitness report. Further, Petitioner contends the Reviewing Officer “echoed those sentiments” in his comments that Petitioner was “[c]onfident and capable, displays a deep understanding, consistently produced.” As further evidence the report should be removed, Petitioner contends he received a Navy and Marine Corps Commendation Medal during the reporting period. He contends this evidence does not support the degraded fitness report markings; specifically going from a “91” to “85” “without incidences or counselings.” Lastly, Petitioner contends the lifting of the numerous COVID policies, mandates, and restrictions warrants removal as does the fact “there is no scientific observable method employed to trace air molecules from Marines’ respiratory systems.” In support of his contentions, Petitioner submitted three character statements for the Board’s review. See enclosure (1).

## CONCLUSION

Upon review and consideration of all the evidence, the Board determined Petitioner’s request warrants partial relief.

Relying on references (c) and (d), the Board determined the Commanding Officer (CO) has wide discretion regarding the subject matter of a counseling entry and it is within his discretionary authority to determine if/when a counseling entry is warranted. Based on the available evidence, the Board concluded Petitioner has provided insufficient evidence to overcome the presumption of regularity attached to the contested counseling entry or to establish that the CO’s decision was unjust or materially in error.

However, the Board found the following language unsupported: “Your negligence of procedures, lack of awareness, poor judgment, and communication failure contributed to the results of 3 Marines testing positive and 2 Marines having to be isolated in the Supply section for not following the COVID-19 guidance.” Specifically, the Board determined the counseling should

---

<sup>1</sup> The fitness report covers the date of the contested Page 11 counseling entry but does not reference the entry.

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]  
XXX XX [REDACTED] USMC

be restricted to Petitioner's failure to obey the COVID-19 mitigation policy rather than include speculative and unsupported comments that Petitioner's actions contributed to others testing positive. Absent that language, the Board determined the Page 11 was valid as written and should remain in Petitioner's record.

Having determined Petitioner had not exhausted his administrative remedies regarding the fitness report and request for an ERSB, the Board declined to consider Petitioner's request to remove the contested fitness report at enclosure (3) or to grant an ERSB.

#### RECOMMENDATION

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

Petitioner's naval record be corrected by redacting the following language from enclosure (2), the 22 February 2021 counseling entry and the associated rebuttal at enclosure (4): "Your negligence of procedures, lack of awareness, poor judgment, and communication failure contributed to the results of 3 Marines testing positive and 2 Marines having to be isolated in the Supply section for not following the COVID-19 guidance."

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.

3/7/2025

