



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

701 S. COURTHOUSE RD

ARLINGTON, VA 22204

[REDACTED]
Docket No. 2455-25
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) MCO 1900.16
(c) MCO 1610.7

Encl: (1) DD Form 149 w/enclosures
(2) [REDACTED], 20 Feb 25
(3) [REDACTED], Misdemeanor/Felony –
Pre-Disposition Minutes
(4) Fitness report for the reporting period 3 Jun 24 to 26 Dec 24
(5) NAVMC 118(11) Administrative Remarks, 8 Oct 24
(6) Petitioner ltr, 15 Oct 24
(7) Record of calls, 28 Aug 24

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 enclosures (4), (5), and (6).

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 17 September 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. Before applying to this Board, Petitioner did not exhaust all administrative remedies available under existing law and regulations within the Department of the Navy. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds the following:

a. On 29 July 2024, Petitioner was arrested for violating [REDACTED] Penal Code 22810 which makes it illegal to purchase, possess, or use tear gas for any purpose other than self-defense. Enclosure (2).

b. On 20 August 2024, Petitioner was accepted into and completed the diversion program. Enclosure (3).

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

c. On 8 October 2024, Petitioner was issued a Page 11 entry counseling him for using tear gas on a civilian that led to Petitioner being apprehended by civilian authorities. Petitioner was also counseled for failing to show on 28 August 2024 to draw his weapon for participation in Annual Range Qualification 31 and not contacting the Staff Non-fire; which led to him being dropped for unauthorized absence. Petitioner acknowledged the entry and, in his statement, claimed that he acted in self-defense during the 29 July 2024 incident and provided an explanation regarding his absence on 28 August 2024 and his attempts to contact the Staff Non-Firing. Enclosures (5) and (6).

d. In his application, Petitioner contends the counseling entry contains false accusations. Petitioner claims that he acted in self-defense, not in a means that showed terrible judgment, or blatant disregard for protocol. Petitioner also claims that the judicial system dismissed the case and sealed the record, indicating it never occurred. Petitioner claims that he was ordered to attend [REDACTED] instead of requesting a date change. Petitioner also contends, the statements regarding his absence without leave from [REDACTED] and his failure to contact the Staff Non-Fire to inform him of his absence are not accurate. He did reach out to him on multiple occasions. Enclosures (1) and (7).

CONCLUSION

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

The Board noted that pursuant to paragraph 6105 of reference (b), Petitioner was issued a Page 11 entry counseling him for violating [REDACTED] Penal Code 22810 and unauthorized absence. The Board also noted that Petitioner acknowledged the entry and provided a statement. The Board determined that the counseling entry was written and issued according to the reference (b). The Board found sufficient evidence that Petitioner was apprehended by civilian authorities and charged for violating [REDACTED] Penal Code 22810 as noted in the counseling entry. The Board thus determined that the commanding officer's decision to counsel Petitioner was proper and within his discretionary authority.

The Board further determined Petitioner's assertion that the actions by the civil court indicate that the incident never happened lacks merit since Petitioner's completion of a diversion program has no bearing on the Commander's authority to document misconduct. According to reference (c), "It is immaterial whether...charges are dismissed or expunged from civilian courts' records after payment of fine, . . . or completion of a period of probation. These actions do not change the character of the initial misconduct."

Concerning Petitioner's unauthorized absence and failure to contact the Staff Non-Fire on 28 August 2024, the Board determined that Petitioner provided sufficient evidence that he attempted to contact someone on the morning of ARQ 31. The Board thus determined that the statement, "Violation of Article 86 (Absence without leave) [s]pecifically, on 28 August 2024, your appointed place of duty was the [REDACTED] to draw your weapon for participation in [REDACTED], to wit, you did not show, nor did you contact your SNCO or the Staff Non-fire which

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

led to being dropped from [REDACTED] from being UA" should be redacted from the counseling entry.

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 Marine Corps Performance Evaluation Review Board. Therefore, the Board took no action related to that aspect of his request.

RECOMMENDATION

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

Petitioner's naval record be corrected by redacting the following statement from enclosure (5):

"Violation of Article 86 (Absence without leave) [s]pecifically, on 28 August 2024, your appointed place of duty was the [REDACTED] to draw your weapon for participation in [REDACTED], to wit, you did not show, nor did you contact your SNCO or the Staff Non-fire which led to being dropped from [REDACTED] from being UA."

No other changes to Petitioner's naval record.

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 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.

11/19/2025

