



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 1374-99

9 July 1999

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED],

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) HQMC Memo 1070 MIF of 9 Apr 99
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Marine Corps filed enclosure (1) with this Board requesting that a nonjudicial punishment be removed from his record.

2. The Board, consisting of Mr. Whitener, Mr. Bartlett and Ms. McCormick, reviewed Petitioner's allegations of error and injustice on 29 June 1999 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, 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. Enclosure (1) was filed in a timely manner.

c. Petitioner enlisted in the Marine Corps on 27 May 1997 at age 22. On 18 November 1998 he received nonjudicial punishment for an unauthorized absence of three hours and disobedience of an order by marrying a foreign national without permission. The punishment imposed included restriction, extra duty, a reduction in rate from LCPL (E-3) to PFC (E-2), and forfeiture of pay totaling \$600. One half of the forfeiture was suspended for a probationary period of six months.

d. On 9 February 1999, the general court-martial convening authority approved Petitioner's NJP appeal and directed that all punishment be set aside. On 10 February 1999 an entry was made on the Offenses and Punishments Page (Page 12) to reflect the NJP and the fact that the NJP appeal had been approved. Although not

submitted by Petitioner, there is apparently an Administrative Remarks Page (Page 11) entry concerning the NJP.

e. Since the NJP appeal was approved, Petitioner is requesting that all documentation concerning the NJP be removed from his record. The Board is aware that the Page 11 and Page 12 are not yet filed in Petitioner's microfiche record.

f. At enclosure (2) is an advisory opinion from Headquarters Marine Corps which notes that the NJP entries were made in accordance with regulations and the entries properly set forth the fact that the appeal was approved. It is recommended that the entries concerning the NJP remain as entered in the service record.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board believes that once the appeal was approved and the punishment set aside, the NJP should not remain in the record. The Board notes that this is similar to a situation where a court-martial conviction is side aside. In such cases all documentation concerning the court-martial is removed from the record. In addition, the Board is aware that Petitioner might be prejudiced if some future reviewers does not read the last two words on the NJP entry which state that the appeal was approved, or they might conclude that the mere fact that he was taken to NJP showed an attitude problem.

Accordingly, the Board concludes that all documentation concerning the NJP of 18 November 1998 and the appeal should be removed from both Petitioner's naval record (both microfiche record and the field record) along with any related entries.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing all entries concerning the NJP of 18 November 1998 and the subsequent appeal from both the microfiche and field service record. This should include but not be limited to page 11 and page 12 entries.

b. 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.

c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with this Report of Proceedings, for retention in a confidential file maintained

for such purpose, with no cross reference being made a part of Petitioner's naval record.

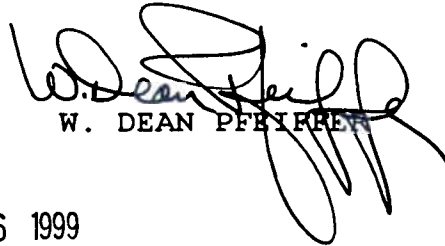
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



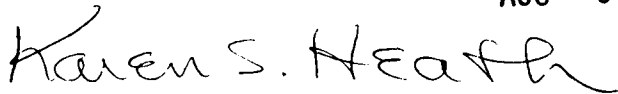
ALAN E. GOLDSMITH
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.



W. DEAN PFEIFFER

Reviewed and approved: AUG 6 1999



KAREN S. HEATH
Principal Deputy Assistant Secretary of the Navy
(Manpower and Reserve Affairs)