



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 4687-98

15 April 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) NPC Memo 1430 Sep 852/063 of 8 Mar 99  
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the United States Navy filed enclosure (1) with this Board requesting that he be reinstated to RM3 (E-4).
2. The Board, consisting of Mr. Brezna, Mr. Kastner and Mr. Milner, reviewed Petitioner's allegations of error and injustice on 6 April 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 received nonjudicial punishment (NJP) 7 April 1997 for disorderly conduct and drunkenness. The punishment imposed included a reduction in rate from RMSN (E-3) to RMSA (E-2) which was suspended for six months. In June 1997 he was advanced to RM3 (E-4). On 10 September 1997 he received another NJP for damaging government property and insubordinate conduct. The previous suspension was vacated and he was reduced in rate from RM3 to RMSN. In addition he was reduced in rate from RMSN to RMSA, but this reduction was suspended for six months. Petitioner reenlisted on 1 March 1998 for four years.
  - d. Petitioner states in his application that when the command advanced him to RM3, this action terminated the suspended reduction and therefore, the action to vacate the suspension was improper.

e. At enclosure (2) is an advisory opinion from the Navy Personnel Command which states, in part, as follows:

.. If a candidates' advancement is made effective while serving in a suspended reduction status as a result of nonjudicial punishment, the suspended reduction status is terminated.

.. The recommendation for (his) petition to be reinstated to Radioman Third Class is recommended for approval effective 16 June 1997.

**CONCLUSION:**

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. Since the command's action to vacate the suspension was improper, the Board agrees with the recommendation contained in the advisory opinion and concludes that he should be reinstated to RM3 as if he was never reduced.

In addition, the Board concludes that the Administrative Remarks (Page 13) entry which documents the NJP of 10 September 1997 should be corrected to show a suspended reduction from RM3 to RMSN, vice the suspended reduction from RMSN to RMSA now of record.

**RECOMMENDATION:**

a. That Petitioner's naval record be corrected to show that he was not reduced from RM3 to RMSN on 10 September 1997. This correction should include removal of the two copies of the Court Memorandum dated 10 September 1997 which documents the vacation of his suspension and his reduction in rate.

b. That Petitioner's naval record be further corrected by changing the Administrative Remarks (page 13) entry which documents the 10 September 1997 nonjudicial punishment to read "Reduction to pay grade E-3 (suspended for 6 months).


c. 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.

d. 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.

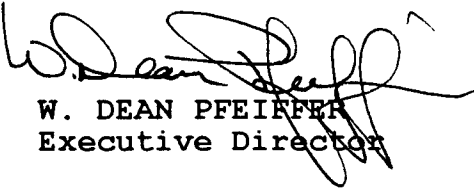
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder



ALAN E. GOLDSMITH  
Acting Recorder

5. 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.



W. DEAN PFEIFFER  
Executive Director