



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

CRS
Docket No: 651-01
14 August 2001

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C. 1552
(b) MCO P.1070.12H (IRAM)
(c) MCO 5300.12

Encl: (1) Case Summary
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a member of the Marine Corps, applied to this Board requesting, in effect, that his naval record be corrected by removing the 7 April 1993 nonjudicial punishment (NJP) and the Administrative Remarks (page 11) entries of 19 April 1993 and 23 October 1996.

2. The Board, consisting of Messrs. Whitener, Lightle, and Harrison, reviewed Petitioner's allegations of error and injustice on 1 August 2001 and, pursuant to its regulations, both the majority and minority determined that certain corrective action 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. Although Petitioner's application to the Board was not filed in timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Marine Corps on 15 August 1989 at age 17. At the time of enlistment, he had completed twelve years of formal education. The record reflects that Petitioner served well for more than three years and was advanced to CPL (E-4).

d. Petitioner's record reflects that on 7 April 1993 he received NJP for consuming alcohol in the barracks and drunk and disorderly conduct. The punishment imposed consisted of forfeitures of \$300 per month for two months, restriction for 30 days, and reduction in rank to LCPL (E-3). However, all punishment was suspended for six months. This NJP is documented by service record entries of 5 and 8 April 1993.

e. On 19 April 1993 a page 11 entry was made concerning the same alcohol related incident that resulted in the NJP of 7 April 1993. Recommended corrective action was completion of a battalion level alcohol rehabilitation program. An addendum to the entry of 25 May 1993 notes that Petitioner completed this program. The entry further notes that he desired to submit a rebuttal, but there is no evidence that one was submitted.

f. On 26 May 1995 Petitioner reenlisted. He has subsequently been promoted to SGT (E-5).

g. On 23 October 1996 Petitioner received a page 11 entry concerning various deficiencies in his performance. The entry referred to earlier counselings, apparently informal, in February and August 1996.

h. Petitioner's fitness report for the period 11 June 1996 to 3 March 1997 rated him "outstanding", along with two other Marines. The 23 October 1996 page 11 entry was not mentioned, nor were any of the deficiencies set forth in the entry. The report refers to Petitioner as a "proficient and intelligent NCO" and states that he "possesses unlimited growth potential".

i. An advisory opinion of 20 March 2001 from the Manpower Management Information Systems Division (MIFD), Headquarters Marine Corps (HQMC), notes that on 8 January 2000 Petitioner's NJP was set aside by his current commanding officer (CO). Such action was taken based on a letter from the CO who imposed the NJP, who essentially stated that Petitioner's misconduct was an aberration and it should not prevent Petitioner from achieving career goals. The MIFD opinion also cites references (b) and (c) in concluding that the CO properly directed the page 11 entry of 19 April 1993, given Petitioner's alcohol related incident. Concerning the 23 October 1996 page 11 entry, the opinion also found it proper because of the deficiencies in Petitioner's performance and the need to document those problems. In summary, the advisory opinion recommends denial of Petitioner's requests. However, the opinion defers to the Military Law Branch of HQMC concerning the NJP.

j. An opinion from the Military Law Branch (JAM), recommends that Petitioner's request be granted in part and denied in part. The opinion recommends removal of the entries documenting the NJP of 7 April 1993, based on the CO's action of 8 January 2000.

However, JAM concurs with MIFD that the 19 April 1993 page 11 entry should not be removed, since it was not dependent on the NJP. Further, a page 11 entry is required for any alcohol related misconduct. JAM offers no comment on the page 11 entry of 23 October 1996.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, a majority of the Board, consisting of Messrs. Lightle and Harrison, concludes that Petitioner's request warrants partial relief. The majority agrees with JAM that both entries documenting the NJP of 7 April 1993 should be removed. However, the majority disagrees with both MIFD and JAM and concludes that the page 11 entry of 23 October 1996 should also be removed since the fitness report covering that period does not mention any of the deficiencies addressed in the entry. The majority believes that if these deficiencies were serious enough to warrant a page 11 entry, they should have been mentioned in the fitness report. Since they were not, the majority believes an informal counseling would have been more appropriate than the page 11 entry. However, the majority concurs with the MIFD and JAM advisory opinions that the page 11 entry of 19 April 1993 should remain in the record. In summary, the majority believes that the NJP and the page 11 entry of 23 October 1996 should be removed but the entry of 19 April 1993 should remain in the record.

MAJORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing all references to the NJP of 7 April 1993. This corrective action should include but not necessarily be limited to, removal of the page 12 entries dated 5 and 8 April 1993.

b. That the record be further corrected by removing the page 11 entry of 23 October 1996.

c. That no further relief be granted.

d. 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.

e. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of 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.

MINORITY CONCLUSION:

The minority member of the Board, Mr. Whitener, agrees with the majority that the NJP should be removed from the record. However, he disagrees with the majority's recommendation to remove the page 11 entry of 23 October 1996. In this regard, he believes that the reporting senior was probably attempting to do Petitioner a favor by not mentioning the counseling entry of 23 October 1996 on the subsequent fitness report due to his improved performance. The minority member is unwilling to conclude that Petitioner's deficiencies did not warrant the page 11 entry at the time it was made. However, the minority member does believe that the page 11 entry of 19 April 1993 should be removed from the record. Clearly, this entry resulted from the same alcohol related incident that prompted the CO to impose NJP. Since the NJP has now been set aside, the minority member believes it would be unfair to leave the page 11 entry in the record. In summary, the minority believes that the NJP and the page 11 entry of 19 April 1993 should be removed, but the entry of 23 October 1996 should remain in the record.

MINORITY RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing all references to the NJP of 7 April 1993. This corrective action should include but not necessarily be limited to removal of the page 12 entries dated 5 and 8 April 1993.

b. That the record be further corrected by removing the page 11 entry of 19 April 1993.

c. That no further relief be granted.

d. 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.

e. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of 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

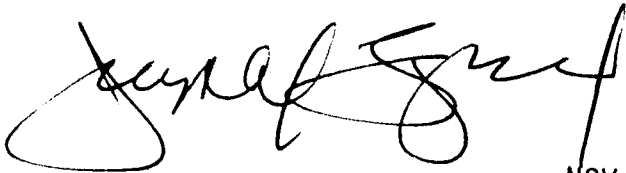
5. The foregoing action of the Board is submitted for your review and action.



W. DEAN PFEIFFER

MAJORITY REPORT APPROVED:

MINORITY REPORT APPROVED:



NOV 28 2001

JOSEPH G. LYNCH
Assistant General Counsel
(Manpower And Reserve Affairs)