



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

BJG
Docket No: 4515-00
13 October 2000

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

Subj: MN2(SW [REDACTED]) USN [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 21 Jun 00 w/attachments
(2) Subject's undtd fax w/PERS-832C memo dtd 23 Aug 00
(3) PERS-311 memo dtd 25 Sep 00
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the following reference to nonjudicial punishment (NJP) from block 43 ("Comments on Performance") of his enlisted performance evaluation report for 18 June 1998 to 15 June 1999: "- Awarded NJP for violation of UCMJ [Uniform Code of Military Justice] Article 134." A copy of this report is in enclosure (1) at Tab A.

2. The Board, consisting of Messrs. Mackey, Pauling, and Pfeiffer, reviewed Petitioner's allegations of error and injustice on 12 October 2000, 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. At enclosure (2) is a letter from the Navy Personnel Command (NPC) to the effect that although his NJP had been set aside, Petitioner would have to apply to this Board to have the reference to it removed from the periodic performance evaluation report in question.

c. In correspondence attached as enclosure (3), the NPC office having cognizance over the subject matter addressed in Petitioner's application has commented to the effect that his request has merit and warrants favorable action.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (3), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the following from block 43 ("Comments on Performance") of his enlisted performance evaluation report for 18 June 1998 to 15 June 1999, signed by Lieutenant J. T. Gumaer, USN, and dated 15 June 1999:

- Awarded NJP for violation of UCMJ Article 134.

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 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. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) 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


JONATHAN S. RUSKIN
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



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4515-00

1610
PERS-311
25 September 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: MN2(SW) [REDACTED]

Ref: (a) CO, Mobile Mine Assembly Group ltr 5812 Ser 00/062 of 16 June 2000
(b) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests modification to his performance evaluation for the period 18 June 1998 to 15 June 1999.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the member was an E-4 at the time of the report. Since E-4 and below evaluations are not filed in the member's headquarters record, our comments are based on an uncertified copy of the report included with the member's petition.

b. The performance evaluation is a Periodic/Regular report signed by the member on 18 June 1999.

c. Reference (a) set aside the member's NJP on 16 June 2000. Per reference (b), Annex S, paragraph S-12, the comments in the original report concerning the member's NJP are now considered inappropriate.

d. The member proves the report to be unjust or in error.

3. We recommend deletion of the following bullet from block-43:

"Awarded NJP for violation of UCMJ Article 134."

[REDACTED]

Head, Performance
Evaluation Branch