



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

CRS
Docket No: 4863-01
30 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

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the Marine Corps, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected by removing the nonjudicial punishment (NJP) awarded to him on 24 July 1996, and the fitness report for the period 1 March to 24 July 1996, and remedial consideration for promotion to SSGT (E-6).

2. The Board, consisting of Mr. Pfeiffer, Mr. Carlsen, and Ms. Humberd, reviewed Petitioner's allegations of error and injustice on 29 August 2001 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. Although it appears that enclosure (1) 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 reenlisted in the Marine Corps on 27 January 1994 after four years of prior active service.

d. Petitioner served without disciplinary incident until 24 July 1996 when he received NJP for an unauthorized absence from 11 to 13 June 1996. The punishment imposed consisted of a

suspended forfeiture of \$200 and reduction in rank from SGT (E-5) to CPL (E-4). Also on 24 July 1996, an order was issued to effect the reduction in rank.

e. In response to Petitioner's application, the Performance Evaluation Review Board has removed the fitness report at issue from his record.

f. An advisory opinion from the Staff Judge Advocate (SJA) to the Commandant of the Marine Corps, dated 1 August 2001, recommends that relief be granted. In this regard, the SJA notes that the evidence in Petitioner's case does not establish his guilt by a preponderance of the evidence. Petitioner's orders placed him in an authorized travel status until 12 June and possibly until 0800 on 13 June 1996. The opinion thus concluded that Petitioner was not an unauthorized absentee from 11 to 13 June 1996 and the NJP should be removed.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. The Board concurs with the advisory opinion that Petitioner was not an unauthorized absentee and the NJP should be removed. Further, the Board concludes that the 24 July 1996 punitive reduction order should also be removed.

Petitioner may contact Headquarters Marine Corps concerning remedial promotion consideration if he believes such action is appropriate.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing all references to the NJP of 24 July 1996, including but not limited to the Offenses and Punishments (page 12) entry.

b. That Petitioner's naval record be further corrected by removing the 24 July 1996 punitive reduction order.


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 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.

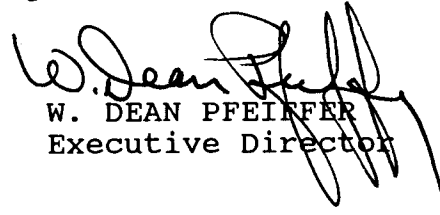
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. 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