



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

CRS
Docket No: 8534-00
11 June 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 Navy, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected by showing that he was not reduced in rate at the 18 August 1999 nonjudicial punishment (NJP).

2. The Board, consisting of Messrs. Morgan, Shy, and Mazza, reviewed Petitioner's allegations of error and injustice on 30 May 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. Enclosure (1) was filed in a timely manner.

c. Petitioner reenlisted in the Navy on 7 June 1996 after about ten years of prior active service.

d. Petitioner, then served well and without disciplinary incident until 18 August 1999 when he received NJP from his Officer-In Charge (OIC), a lieutenant commander, for failure to obey a lawful order, dereliction of duty, and making false statements. The punishment imposed consisted of a forfeiture of \$442 which was suspended for six months, restriction for four days, and a reduction in rate from AG1 (E-6) to AG2 (E-5).

e. An advisory opinion from the Deputy Assistant Judge Advocate General (Criminal Law), dated 22 May 2001, recommends that relief be granted since an OIC in the rank of lieutenant commander or below cannot reduce an enlisted servicemember at NJP.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. The Board agrees with the advisory opinion that Petitioner should be restored to AG1 and that the reduction in rate should be deleted from the NJP of 18 August 1999.

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 to show that at the NJP of 18 August 1999, Petitioner received punishment of a suspended forfeiture of \$442 and restriction for four days, vice the punishment actually imposed on that date.

b. That the record be further corrected to show that Petitioner was never reduced from AG1 to AG2, and has served continuously as a AG1 since he was first advanced to that rate.

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.

Robert D. Friedman

For W. DEAN PFEIFFER
Executive Director