



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

SRB

Docket No. 04211-03

28 October 2003

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 with attachments  
(2) Case Summary  
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member in the Marine Corps, applied to this Board requesting that his record be corrected by removing the nonjudicial punishment (NJP) of 11 October 1999.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 28 October 2003, 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 enlisted in the Marine Corps on 9 July 1992 at age 18. Since then, he has served continuously on active duty and been promoted to the rank of sergeant

d. Documentation and statements submitted by Petitioner indicate that on 12 July 2002, an NJP imposed on 11 October 1999 was set aside by the commanding officer after he determined that the NJP was unjust. On 24 July 2002 the commanding officer, sent a letter to the staff sergeant selection board, in which he noted that the NJP had been set aside and that Petitioner was "in the process of having the fitness report reflecting this (NJP) removed from his record.

e. A 25 June 2003 memorandum from the Military Law Branch, Judge Advocate Division, Headquarters Marine Corps, concluded that the commanding officer was authorized to set the NJP aside, the NJP had not been removed due to administrative error, and Petitioner's request should be granted.

f. On 11 September 2003, the Performance Evaluation Review Board at HQMC directed that Petitioner's naval record be corrected by removing the fitness report for the period 1 March to 12 October 1999.

#### CONCLUSION:

Upon review and consideration of all the evidence of record the Board agrees with the Military Law Branch that the NJP imposed on 12 October 1999 be removed from Petitioner's record.

#### RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the NJP of 11 October 1999. This corrective action should include but not necessarily be limited to, removal of the entry dated 12 October 1999 from page 12a of Petitioner's record.

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 the this Report of Proceedings, for retention in a confidential file maintained for that purpose, with no cross reference being made a part of Petitioner's naval record.

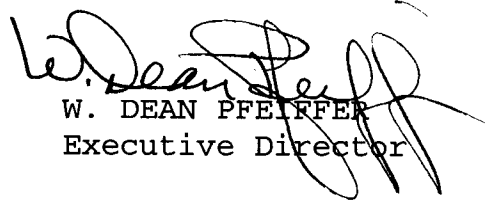
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder



ALAN E. GOLDSMITH  
Acting Recorder

5. Pursuant to the delegation of authority set forth in Section 6(e) of the revised Procedures of the Board for the 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