



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

BJG

Docket No: 395-06

28 March 2007

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

Subj: [REDACTED]  
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 5 Jan 06 w/encls  
(2) HQMC JAM7 memo dtd 10 May 06 w/encls  
(3) Counsel ltr dtd 20 Jun 06

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected by removing the Headquarters Marine Corps (HQMC) Routing Sheet (5211) dated 25 February 2003 with attachments, a copy of which is at Tab A.

2. The Board, consisting of Messrs. [REDACTED] and [REDACTED] and Ms. [REDACTED] reviewed Petitioner's allegations of error and injustice on 22 March 2007, and pursuant to its regulations, determined that the limited corrective action indicated below should be taken of 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. The contested adverse material includes record of Petitioner's resignation of his commission dated 18 June 2002, and nonjudicial punishment (NJP) of 20 December 2002. Counsel argues that Petitioner was denied his right to effectively rebut

all of the adverse material before it was filed in his Official Military Personnel File.

c. In correspondence attached as enclosure (2), the HQMC Military Law Branch, Judge Advocate Division, has commented to the effect that Petitioner's request has some merit and warrants partial favorable action. Specifically, this advisory recommends removal of all references to the resignation of his commission.

d. By letter dated 20 June 2006 (enclosure (3)), counsel again argues that Petitioner's right to rebut the adverse material was violated, and that as a matter of fairness, the NJP should be removed because it documents a one-time lapse in judgment.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the content of enclosure (2), the Board finds the existence of an injustice warranting the following limited relief:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing from the Commendatory and Derogatory Material section of his OMPF all references to the resignation of his commission and his withdrawal of the resignation.

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.

d. That the remainder of Petitioner's request be denied.

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



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