



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

TJR
Docket No: 8054-08
5 June 2009

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

Subj: REVIEW 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, a former enlisted member of the Marine Corps, filed enclosure (1) with this Board requesting that his naval record be corrected by removing the nonjudicial punishment (NJP) of 21 November 2007, all material referencing charges, and the punishment imposed.

2. The Board, consisting of Mr. [REDACTED], Ms. [REDACTED], and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 3 June 2009 and, pursuant to its regulations, determined that the partial 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 12 December 2005 at age 19. Documentation in the record reflects that on 21 November 2007 he received NJP for wrongful possession of marijuana. The punishment imposed was a \$1,300 forfeiture of pay, restriction and extra duty for 45 days, and reduction to paygrade E-2. The forfeitures, restriction, and extra duty were suspended for six months.

d. As a result of Petitioner's illegal drug involvement, the record also reflects three page 11 counselling (administrative remarks) entries dated 19 February 2008. Subsequently, Petitioner was administratively processed for separation by reason of misconduct. In this regard, the discharge authority directed discharge under other than honorable conditions. On 31 July 2008 he was so discharged and assigned an RE-4B reenlistment code.

e. In the enclosed advisory opinion dated 3 March 2009, Headquarters Marine Corps, Military Law Branch (JAM3), recommended that Petitioner's request for removal of the NJP be denied because it was properly and lawfully imposed, and because he was aware of his appeal rights and the right to make a rebuttal to the NJP, but opted not to do either.

f. In the enclosed advisory opinion dated 1 April 2009, the Headquarters Marine Corps Manpower Information, Manpower Management Information System Division (MIO) recommended that Petitioner's request for removal of the counselling entries be partially granted. In this regard, MIO stated that the first and third counselling entries do not meet the elements required for a proper counselling entry, and therefore should be removed from the record. However, MIO stated that the second entry does meet all of the required elements of a proper counselling entry and should remain in the record.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial favorable action. In this regard, the Board substantially concurs with the comments contained in the advisory opinions provided by Headquarters Marine Corps codes MIO and JAM3. Accordingly, only the first and third page 11 counselling entries should be removed from Petitioner's record. The Board, also in concurrence with the advisory opinions, concludes that the NJP was properly imposed and should not be removed from the record.

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

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the first and third page 11 administrative remarks entries, both dated 19 February 2008, from the record.

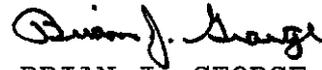
b. That no further relief be granted.

c. That any and all materials 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 materials be added to the record in the future.

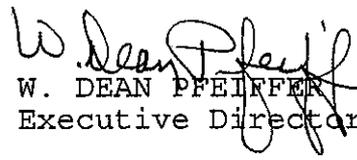
d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross-reference being made a part of Petitioner's naval record.

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


BRIAN J. GEORGE
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 Regulation, 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