



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

Docket No: 10502-08  
24 February 2009

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) Case Summary  
(2) Subject's naval record  
(3) HQMC memo 1070 JAM2, 30 Dec 08

1. Pursuant to the provisions of reference (a), Petitioner applied to this Board requesting that his naval record be corrected by setting-aside the nonjudicial punishment (NJP) imposed on him on 10 October 2007, and removing all documents related thereto from his naval record, to include the fitness report he received for the 30 June-15 October 2007 period. He contends that he received the NJP as a result of unlawful command influence.
2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Ms. [REDACTED] reviewed Petitioner's allegations of error and injustice on 4 February 2009 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. Petitioner reenlisted in the Marine Corps on 12 May 2007 with more than six years of prior active service. On 23 August 2007 his battalion commander informed the regimental commander that Petitioner had been suspended from drill instructor duty on for a period of ten days and given a non-punitive letter of caution which addressed his failures of leadership and supervision, and use of improper training and mail procedures. On 18 September 2007 the regimental commander advised the battalion commander that the action taken against Petitioner was insufficient, and that Petitioner would be seen at battalion level NJP for "his violations of the RTO and poor overall

leadership". The regimental commander also stated that if the battalion commander preferred, he would handle the NJP at regimental level.

c. On 10 October 2007 Petitioner received NJP from his battalion commander for six unspecified specifications of Article 92 of the Uniform Code of Military Justice. The punishment consisted of forfeiture of \$375 pay per month for two months.

d. Petitioner received a fitness report for the period 30 June 2007 to 15 October 2007 which mentions the nonjudicial punishment of 10 October 2007.

e. In correspondence attached as enclosure (3), the Deputy Head, Military Law Branch, Judge Advocate Division, Headquarters Marine Corps, advised the Board, in effect, that although Petitioner makes a showing of unlawful command influence, there is nothing in the record to indicate when he became aware of the issue. If Petitioner did not know about the regimental commander's letter when he accepted NJP, relief would be warranted as he has produced sufficient evidence to show that unlawful command influence was present.

f. In response to the advisory opinion, Petitioner stated that he was not aware of the regimental commander's letter when he accepted NJP.

#### CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board concurs with the advisory opinion. Accordingly, the Board finds the existence of an injustice warranting the following corrective action.

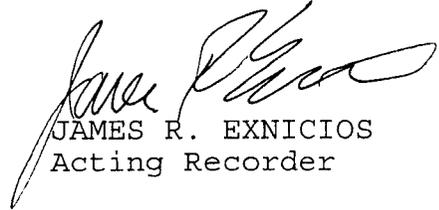
#### RECOMMENDATION:

a. That Petitioner's naval record be corrected by setting-aside the nonjudicial punishment of 10 October 2007 and the fitness report for the period 30 June-10 October 2007, removing all related documents from his naval record, and restoring all rights, benefits and privileges he lost as a result of the nonjudicial punishment.

b. 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



JAMES R. EXNICIOS  
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