



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

SJN  
Docket No: 00025-09  
22 February 2010

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) HQMC JAR4 advisory opinion dated 29 Sep 09  
(4) HQMC JAR4 advisory opinion dated 26 Jan 10  
(5) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former warrant officer of the Marine Corps, filed enclosure (1) with this Board requesting the removal of his general court-martial from his official records, retirement in the grade of Chief warrant officer (CW05), changing the narrative reason for his retirement (retired voluntarily, unacceptable conduct (moral/professional dereliction)) and recouping of any funds deemed appropriate.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED], reviewed Petitioner's allegations of error and injustice on 18 February 2010 and, pursuant to its regulations, determined that the limited 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. Although enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner was serving as a CWO5 when he was found guilty at a general court-martial of two lawful order violations and conduct unbecoming of an officer and a gentlemen. As part of his pretrial agreement, he pled guilty and voluntarily retired in the highest grade satisfactorily served.

d. Enclosures (3) and (4) are advisory opinions from the Headquarters Marine Corps, Staff Judge Advocate recommending partial favorable action. The advisory opinions state that Petitioner should have been retired in paygrade CWO4, his highest rank satisfactorily served.

e. The Board does not have the authority to set aside the findings of a court-martial, so Petitioner's sentence was only reviewed for clemency.

CONCLUSION:

The Board is expressly forbidden by law from reviewing the findings of guilt rendered by a court-martial and therefore must restrict its review to the sentence which was imposed.

Upon review and consideration of all the evidence of record, and especially in light of enclosures (3) and (4), the Board concludes that Petitioner's request warrants partial favorable action relief.

RECOMMENDATION:

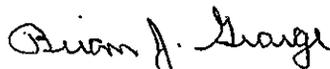
a. That Petitioner's naval record be corrected to show that on 31 October 2005, he was retired from active duty, in the pay grade of CWO4, vice CWO3 now of record.

b. That no further relief be granted.

c. That this Report of Proceedings be filed in the Petitioner's naval record.

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

  
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