



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

BJG

Docket No: 2415-09

30 July 2009

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

Subj: EX: [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) Four DD Forms 149 dtd 5 Sep 07 w/attachments
(2) HQMC MIO memos dtd 31 Jan 08, 8 Sep 08 & 16 Mar 09
w/encl
(3) HQMC JAM5 memo dtd 23 Sep 08
(4) Subj's ltr dtd 26 Feb 08
(5) Subj's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed written application, enclosure (1), with this Board requesting that his naval record be corrected by removing the service record page 11(b) ("Administrative Remarks (1070)") entry dated 17 January 2001 with undated rebuttal, concerning violation of restriction awarded at the nonjudicial punishment (NJP) for having a female visitor in his room; the page 11(b) entry dated 17 January 2001 with undated rebuttal concerning violation of restriction awarded at NJP for unauthorized absence; page 11(c) entry dated 14 August 2001, concerning a suspended administrative discharge; page 11(c) entry dated 14 August 2001 with undated rebuttal, concerning unauthorized driving at Camp Johnson; undated lined through page 11(c) entry; page 11(d) entry dated 8 March 2002; the service record page 12 ("Offenses and Punishments (1070)") entries dated 7 and 9 August 2001; and the page 12(c) entry dated 27 August 2001, concerning the NJP on that date, with related page 12 dated 24 August 2001. Copies of the page 11 and 12 entries at issue are at Tab A in enclosure (1). He also requested modifying or removing his "Proficiency/Conduct" marks for 2 June 2000, 3 January 2001, 5 April 2001, 29 August 2001, and 23 December 2002 and entering missing entries for July 2000, 15 September 2000, and 31 July 2002. A copy of the Marine Corps Total Force System data showing his "Proficiency/Conduct" marks as of

2 December 2002 is at enclosure (2). Finally, he requested that his other than honorable discharge (OTH) for misconduct be upgraded.

2. The Board, consisting of Messrs. Boyd and Storz and Ms. McCormick, reviewed allegations of error and injustice on 28 July 2009, and pursuant to its regulations, determined that limited relief should be granted. 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 which were available under existing law and regulations within the Department of the Navy.

b. The page 12 on which the contested entries dated 7 and 9 August 2001 appear also includes uncontested entries.

c. In enclosure (2), the Headquarters Marine Corps (HQMC) Manpower Information Operations, Manpower Management Information Systems Division (MIO) comments to the effect that Petitioner's request regarding page 11 entries warrants partial relief, specifically, removing the page 11(d) entry dated 8 March 2002 with rebuttal dated 12 March 2002. MIO further recommended removing the page 12 entries dated 7 and 9 August 2001, because they relate to an NJP Petitioner did not receive, but did not address the page 12 entry dated 27 August 2001.

d. In enclosure (3), the HQMC Military Law Branch, Judge Advocate Division (JAM5) has commented to the effect that no relief is warranted. This advisory opinion did not address Petitioner's request to remove the page 11(d) entry dated 8 March 2002. JAM5 incorrectly treated the page 12 dated 27 August 2001, documenting an NJP, as a counseling entry. Petitioner contends this NJP was a "frivolous and harassing" punishment for being five minutes late for formation. JAM5 stated that "Without further evidence or information, we do not recommend granting [this] request." Contrary to MIO, JAM5 recommended that the page 12 entries dated 7 and 9 August 2001 stand, stating "Since [Petitioner] never had an NJP, there was no injustice in this case." (Note: Petitioner actually had NJP on two occasions for wrongful use and possession of a controlled substance, and failure to go to at the time prescribed to accountability formation.)

e. In enclosure (4), Petitioner submitted further argument concerning the contested page 11(c) entries dated 14 August 2001, clarified his request regarding "Proficiency/Conduct" marks, and provided additional information in support of that request.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board substantially concurs with enclosure (2) in finding the existence of an error and injustice warranting partial relief, specifically, removal of the page 11(d) entry dated 8 March 2002, with the rebuttal dated 12 March 2002, as well as the page 12 entries dated 7 and 9 August 2001, whose retention enclosure (3) recommended. Concerning the page 12 entry dated 27 August 2001, documenting the NJP on that date, the Board concurs with enclosure (3) in concluding that entry should stand, as Petitioner has provided insufficient evidence to support his contention that the NJP was "frivolous" and "harassing".

Regarding Petitioner's OTH discharge, the Board finds that it was warranted based on his misconduct, which resulted in two NJP's. The Board substantially concurs with enclosures (2) and (3) in concluding no further relief is warranted. In view of the above, the Board directs the following limited corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the service record page 11(d) ("Administrative Remarks (1070)") entry dated 8 March 2002, and his rebuttal dated 12 March 2002. This is to be accomplished by physically removing the page 11(d) on which the entry appears and the rebuttal, or completely obliterating the entry and rebuttal so they cannot be read, rather than merely drawing a line through them.

b. That Petitioner's record be corrected further by removing the service record page 12 ("Offenses and Punishments (1070)") entries dated 7 and 9 August 2001. This is to be accomplished by reconstructing the page 12 on which the entries appear, or completely obliterating the entries so they cannot be read, rather than merely drawing a line through them.

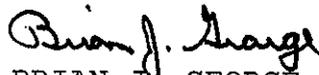
c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

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.

e. 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


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 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