



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

HD:hd  
Docket No. 04493-09  
9 October 2009

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

Subj: [REDACTED]  
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 20 Apr 09 w/attachments  
(2) PERS-00J ltr dtd 10 Aug 09 w/enclosure  
(3) PERS-834 ltr dtd 21 Aug 09  
(4) PERS-32 memo dtd 2 Sep 09

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing all reference to his nonjudicial punishment (NJP) awarded on 14 November 2002 and subsequently set aside, to include the fitness report for 7 September to 23 December 2002, a copy of which is at Tab A.

2. The Board, consisting of Messrs. Dunn, Grover and Sproul, reviewed Petitioner's allegations of error and injustice on 8 October 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. The NJP in question, for driving under the influence of alcohol, was set aside on 23 August 2005 because the charges

were dismissed in the civil court after the NJP had been awarded.

c. In enclosure (2), PERS-00J, the Navy Personnel Command (NPC) legal office, commented to the effect that the action setting aside the NJP at issue was valid.

d. In enclosure (3), PERS-834, the NPC office with cognizance over officer performance, commented to the effect that "the report of NJP" should be removed from Petitioner's record in light of the set aside action. PERS-834 further recommended filing in Petitioner's record a Memorandum for the Record documenting the civil action in his case. The Board did not consider filing such a memorandum, as Petitioner did not request it.

e. In enclosure (4), PERS-32, the NPC office with cognizance over performance evaluations, commented to the effect the contested fitness report should stand, as it has not been established Petitioner was innocent of the misconduct mentioned in the report.

f. Block 41 ("Comments on Performance") of the contested fitness report includes the following: "Punitive letter of admonition for driving under the influence of alcohol awarded at Captain's Mast on 14 November 2002." and "During Mast proceedings, [Petitioner] was remorseful for his actions and stated that it was a one time isolated incident."

#### CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (2) through (4), the Board finds the existence of an error and injustice warranting the following limited corrective action:

#### RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing all reference to the NJP awarded on 14 November 2002, to include the following in block 41 of the fitness report for 7 September to 23 December 2002, signed by [REDACTED] USN and dated 23 December 2002:

(1) "Punitive letter of admonition for"

(2) "awarded at Captain's Mast on 14Nov02." and

(3) "During Mast proceedings,"

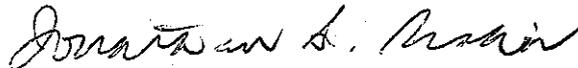
b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

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. 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

  
JONATHAN S. RUSKIN  
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