



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

BJG
Docket No: 4676-09
17 December 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) DD Form 149 dtd 1 Apr 09 w/attachment
(2) HQMC MIO dtd 17 Apr 09
(3) Memo for record dtd 30 Nov 09
(4) Subject'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, in effect, that his naval record be corrected by removing the service record page 11 ("Administrative Remarks (1070)") counseling entry dated 28 December 2007 and his rebuttal dated 31 December 2007, copies of which are in enclosure (1) at Tab A.

2. The Board, consisting of Messrs. Garst, Leeman and Mann, reviewed allegations of error and injustice on 10 December 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. Petitioner exhausted all administrative remedies which were available under existing law and regulations within the Department of the Navy.

b. Petitioner contends the entry at issue is unjust, as he was unjustly counseled for another Marine's misuse of a Government vehicle.

c. The entry in question includes the following:
"Counseled this date concerning your violations of the UCMJ [Uniform Code of Military Justice]." Petitioner's rebuttal includes the following: "for violations of UCMJ."

d. In enclosure (2) as amended by enclosure (3), the Headquarters Marine Corps Manpower Information Operations, Manpower Management Information Systems Division (MIO) commented to the effect that Petitioner's request has merit and warrants partial relief, specifically, removal of all references to violating the UCMJ, comprising the following: "your violations of the UCMJ," "This is a violation of Article 92 x 2 Failure to obey an order or Regulation, and" and "; do not violate the UCMJ." MIO recommended effecting these corrections by use of the "line out method."

CONCLUSION:

Upon review and consideration of all the evidence of record, and in substantial concurrence with enclosure (2), as amended by enclosure (3), the Board finds the existence of an error warranting partial relief, specifically, modification of the contested entry by removing "concerning your violations of the UCMJ," "This is a violation of Article 92 x 2" and "; do not violate the UCMJ." The Board finds the word "concerning" should be removed, as this makes the entry read properly and the word "concerning" adds no necessary information. The Board finds that "Failure to obey an order or Regulation, and" should stand, as it clarifies the misconduct for which Petitioner was counseled, and it does not expressly refer to charges or disciplinary action under the UCMJ. The Board also finds that Petitioner's rebuttal should be modified by removing "for violations of UCMJ." The Board finds the corrections should not be made by the "line out method," since this would leave the material to be removed legible, which could prejudice Petitioner. Finally, his unsupported statement does not persuade the Board that he was wrongfully counseled for another Marine's misconduct. 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 following from the service record page 11 ("Administrative Remarks (1070)") entry dated 28 December 2007:

- (1) concerning your violations of the UCMJ (line 2)

(2) This is a violation of Article 92 x 2 (lines 14 and 15)

(3) ; do not violate the UCMJ (line 21)

That his record be corrected further by removing the following from his rebuttal dated 31 December 2007:

for violations of UCMJ (line 2)

These corrections of the page 11 entry and rebuttal are to be accomplished by completely obliterating the material to be removed so it cannot be read, rather than merely lining through it.

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.

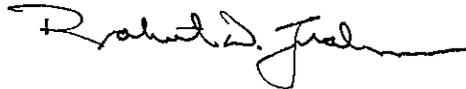
d. That the remainder of Petitioner's request be denied.

4. 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


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.

A handwritten signature in cursive script, appearing to read "F. W. Dean Pfeiffer".

F. W. DEAN PFEIFFER
Executive Director