



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

JSR
Docket No. 04770-09
9 July 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 30 Dec 08 w/attachments
(2) HQMC MMER/PERB memo dtd 2 Apr 09
(3) HQMC MIO memo dtd 29 Apr 09
(4) HQMC MMER e-mail dtd 8 May 09
(5) HQMC MIO memo dtd 12 Jun 09
(6) Subject's ltr dtd 25 Jun 09
(7) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected by removing the fitness report for 1 June to 1 November 2007, a copy of which is at Tab A. As shown in enclosure (2), the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has directed removing the contested fitness report. Petitioner further requested removing the service record page 11 ("Administrative Remarks (1070)") counseling entry dated 1 August 2007 and his rebuttal dated 21 October 2007. Copies of these documents, as they appear in his Official Military Personnel File (OMPF), are at Tab B.

2. The Board, consisting of Ms. Wilcher and Messrs. Bowen and McBride, reviewed Petitioner's allegations of error and injustice on 9 July 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 contested counseling entry addresses an alleged alcohol related incident that was the subject of a preliminary inquiry. Petitioner asserts the findings were false and that they were tainted by influence from the ambassador and a Colonel H---, who was angry with Petitioner for having contacted the inspector general about alleged unethical conduct of another officer who was ultimately relieved.

c. The counseling entry at issue begins as follows:

070801. Region 2, MCESC [sic] [Marine Corps Embassy Security Group], Counseled this date for the following deficiencies: Violations of Article 133 and Article 134 UCMJ [Uniform Code of Military Justice] relating to an alcohol related incident in Muscat, Oman in June 2007:

d. In enclosure (3), the HQMC Manpower Information Operations, Manpower Management Information Systems Division (MIO) commented to the effect that the copy of the contested counseling entry on file in Petitioner's Officer Qualification Record (OQR) should be completely removed, as it was not signed by the commanding officer (CO); and that the copy on file in his OMPF, which is signed by the CO, should be retained, but modified by deleting the following language: "Violations of Article 133 and Article 134 UCMJ relating to an alcohol related incident in Muscat, Oman in June 2007:" MIO justified this recommendation by stating violations of the UCMJ should be resolved by disciplinary action, rather than counseling, but concluded the entry at issue, as it appears in Petitioner's OMPF, otherwise meets the elements of a proper page 11 counseling.

e. Enclosure (4) explains the PERB decision to direct removing the contested fitness report.

f. Enclosure (5) shows that MIO, having reviewed enclosure (4), adhered to its position reflected in enclosure (3).

g. Enclosure (6) is Petitioner's reply to MIO, contending that not removing the counseling entry would be inconsistent with the action of the PERB, since "The entire incident was

unjust and a clear act of reprisal" and the entry was the source document for the fitness report whose removal has been directed.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (3), the Board finds the existence of an error warranting partial relief, specifically, modification of the contested counseling entry to remove reference to UCMJ violations. However, the Board does not fully agree with the specific modification proposed by MIO, nor does it agree the OQR copy should be completely removed.

The Board finds that "the following deficiencies:" should be removed as well, since it directly pertains to "Violations of Article 133 and Article 134 UCMJ"; and that "an alcohol related incident in Muscat, Oman in June 2007:" should be retained, as it does not refer to violations of the UCMJ, it identifies the incident that was the basis for the entry, and it identifies the time and place of that incident. Contrary to MIO; the Board finds both the OMPF and OQR copies of the entry should be modified as indicated above, and that the OQR copy should not be completely removed. In this regard, the Board particularly notes that the OMPF copy is signed by the CO, so the absence of his signature from the OQR copy is an immaterial administrative error.

The Board is not persuaded that the findings of the preliminary inquiry were false, or that they were influenced by either the ambassador or [REDACTED]

In view of the above, the Board directs the following limited corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by modifying as follows the service record page 11 ("Administrative Remarks (1070)") entry dated 1 August 2007:

Remove "the following deficiencies: Violations of Article 133 and Article 134 UCMJ relating to," so the entry, as amended, will begin as follows: "Region 2, MCESC [sic], Counseled this date for an alcohol related incident in Muscat, Oman in June 2007:"

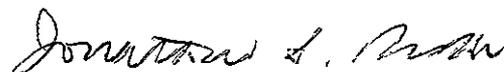
b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

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.

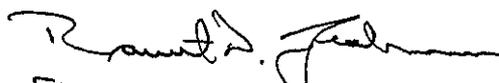
d. That the remainder of Petitioner's request be denied.

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.


FOR W. DEAN PFEIFFER
Executive Director