



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

CRS
Docket No: 6705-09
5 October 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
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner applied to this Board requesting that his naval record be corrected by setting-aside the nonjudicial punishment (NJP) he received on 5 March 2008 and awarding him the Good Conduct Medal.

2. The Board, consisting of Messrs. [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 16 September 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. Petitioner enlisted in the Navy on 6 December 2005.

c. On 5 March 2008 he received NJP for use of cocaine. The punishment imposed consisted of forfeiture of one-half months pay per month for two months, reduction in rank, and restriction and extra duty for 45 days.

d. On 6 August 2008 an administrative discharge board (ADB) convened to determine whether or not Petitioner had committed misconduct/drug abuse, and if so, to recommend retention or discharge. The ADB found that Petitioner had not committed misconduct, and recommended that he be retained in the Navy. Petitioner's commanding officer did not contest the findings or recommendation of the ADB; however, he denied Petitioner's request that he set-aside the related NJP.

e. Petitioner argues that he did not knowingly use cocaine. He also argues that if the ADB found no misconduct then the NJP should be removed from his record.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board believes Petitioner's argument that the NJP and ADB are related, and concludes that the NJP should be set aside. However, the Board also concluded that the award of the Good Conduct Medal can be handled locally by his command.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by setting-aside the NJP he received on 5 May 2008, removing the record of the punishment and all references thereto from his record, and restoring all rights, benefits and privileges lost as a result of that punishment.

b. That no further relief be granted.

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

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



JAMES R. EXNICIOS
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