



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

REC

Docket No: 09753-09

13 November 2009

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

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

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) HQMC JAM6 memo dtd 21 Oct 09
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the Marine Corps, filed (enclosure (1)) with this Board requesting that his naval record be corrected by removing all references to the nonjudicial punishment (NJP) he received on 19 August 2005.

2. The Board, consisting of Ms. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED], reviewed Petitioner's allegations of error and injustice on 12 November 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. Enclosure (1) was filed in a timely manner.

c. Petitioner enlisted in the Marine Corps on or about 11 August 2003, and is currently serving on active duty. He served without disciplinary incident until 19 August 2005, when he received NJP for dereliction in the performance of duty. The punishment imposed was restriction for 21 days and a \$1,612 forfeiture of pay.

d. On 20 June 2007 the Petitioner's commanding officer (CO) who imposed the 19 August 2005 NJP set aside the NJP. His CO had

reevaluated the punishment after 22 months and decided that it was unjust. However, the NJP remains documented in Petitioner's service record.

e. An advisory opinion (AO) (enclosure (3)) from the Headquarters Marine Corps, Military Law Branch, Judge Advocate Division (JAM6), recommends that Petitioner's request be granted.

CONCLUSION:

Upon review and consideration of all the evidence or record and especially in light of (enclosure (3)), the Board concludes that Petitioner's request warrants favorable action.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

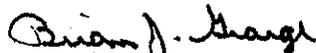
a. That Petitioner's naval record be corrected by removing the NJP imposed on 19 August 2005 and all references thereto, including the punishment imposed.

b. That any and all materials 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 materials 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.

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


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 Regulation, 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