



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

TJR
Docket No: 12146-09
15 December 2009

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

Subj: REVIEW NAVAL RECORD OF [REDACTED]

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

Encl: (1) DD Form 149 with attachments
(2) Case Summary
(3) Petitioner'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 the nonjudicial punishment (NJP) he received on 4 August 2008 and all references thereof, which includes the letter of reprimand (LOR), unit punishment book (UPB) entries, and administrative remarks (page 11) entries.

2. The Board, consisting of Mr. [REDACTED], Ms. [REDACTED], and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 8 December 2009 and, pursuant to its regulations, a determined that the partial 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. In addition, the Board considered the advisory opinions furnished by the Marine Corps Military Law Branch, Judge Advocate Division dated 21 October 2009 and the Manpower Information Operations, Manpower Management Information Systems Division dated 16 November 2009, copies of which are provided in enclosure (1).

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 22 July 1990 and began a period of active duty on 25 January 1991. Petitioner served without incident until June 2008, when he became the Petitioner of a preliminary inquiry regarding fraternization. Following an investigation, he was charged with two specifications of having an inappropriate relationship with a junior female Marine.

d. On 4 August 2008 Petitioner received NJP for two specifications of violation of a lawful order, namely, fraternization and failure to obey orders or regulations. The punishment imposed was an LOR. The LOR specified his disobedience of a lawful order and regulation, which was contrary to the standards of good order and discipline, in May and April 2008 and his dereliction in the performance of his duties and responsibilities.

e. As a result of the foregoing, an administrative remarks (page 11) entry dated 4 August 2008, was placed in Petitioner's record. This entry served as counselling for him due to his having a junior female Marine in his living quarters on two occasions. Although Petitioner acknowledged and signed this entry, he provided a statement which clarified the events for this counselling. His statement noted, in part, that on one occasion the junior female Marine was in his living quarters, but not at the same time he was there, and that on the second occasion she was not in his living quarters, but merely in the vicinity.

f. Another administrative remarks (page 11) entry dated 3 November 2008, was placed in Petitioner's record. This entry noted counselling regarding Petitioner's violations of the Uniformed Code of Military Justice (UCMJ), specifically, failure to obey an order or regulation on 25 May (to have no contact with the junior female Marine) and on 20 October 2008 (providing transportation for this junior female Marine). He also provided a statement clarifying the events surrounding this entry.

g. During the period from 3 to 20 November 2008 an investigation was conducted regarding the possible misconduct of Petitioner and the junior female Marine. This investigation included the issuance of a military protective order (MPO) that directed him not to have any direct or indirect contact with her. However, Petitioner did contact her because he was under the assumption that the MPO had expired.

h. In October and November 2009, two advisory opinions were received from the Marine Corps regarding Petitioner's request to remove the NJP, LOR, UPB entries, and administrative remarks (page 11) entries. The advisory opinions recommended partial relief. In this regard, the advisory opinions state that the 3 November 2008 administrative remarks (page 11) entry should be removed from the record because this entry did not meet the elements of proper counselling since violations of the UCMJ are not deficiencies and should be resolved through punitive measures.

CONCLUSION:

Upon review and consideration of all the evidence or record, the Board concludes that Petitioner's request warrants partial favorable action. In this regard, the Board substantially concurs with the comments contained in the advisory opinions and concludes that since the 3 November 2008 administrative remarks (page 11) entry was improper, it should be removed from the record. However, the Board further concludes that since the NJP, LOR, UPB entries, and 4 August 2008 administrative remarks (page 11) entry were properly documented in the record, all should remain as a part of his record.

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

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing and/or totally obliterating the administrative remarks (page 11) entry dated 3 November 2008.

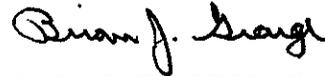
b. That any and all materials or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record and that no such entries or materials be added to the record in the future.

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.

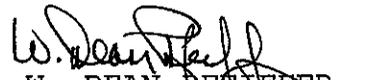
d. That no further relief be granted.

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