



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

TJR
Docket No: 12589-09
28 April 2010

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 with advisory opinions
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the Marine Corps Reserve, filed enclosure (1) with this Board requesting removal of derogatory documentation from his record, to include all references of the nonjudicial punishment (NJP) imposed on 7 August 2008.

2. The Board, consisting of Ms. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 27 April 2010 and, pursuant to its regulations, 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.

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 is presently serving in the Marine Corps Reserve in paygrade E-6. He served without disciplinary incident until 7 August 2007, at which time he received NJP for wrongful appropriation of \$300 that was the property of another Marine.

The only punishment imposed at NJP was revocation of his selection to gunnery sergeant, paygrade E-7. Subsequently, reference to the NJP was entered in his official military personnel file, which included both administrative remarks and unit punishment book entries, and a selection for promotion revocation letter.

d. On 21 November 2000 the NJP was set aside based solely on a legal technicality. In this regard, the punishment imposed, specifically, revocation of selection to gunnery sergeant, was not an authorized punishment under Article 15 of the Uniform Code of Military Justice.

e. In an advisory opinion dated 8 January 2010 from the Headquarters Marine Corps Military Law Branch, it was recommended that Petitioner's request for removal of the derogatory material referencing the NJP be granted because it had been set aside. The advisory opinion further stated, in part, that his request regarding removal of his revocation of selection to gunnery sergeant should be deferred to the Enlisted Promotion Section.

f. An advisory opinion from the Headquarters Marine Corps Enlisted Promotion Section dated 9 March 2010 noted that the NJP had been set aside, but recommended that Petitioner's request for reinstatement and removal of his revocation of selection to gunnery sergeant be denied because they were two distinctly separate issues. The advisory opinion stated, in part, that his promotion was revoked not solely due to the NJP, but also because of his poor judgment and lack of integrity. It also stated that he failed to maintain the high standards of personal and professional performance expected of a staff noncommissioned officer.

g. In Petitioner's application, he asserts, in part, that since the NJP was set aside he should be reinstated for selection of and/or promoted to gunnery sergeant.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial favorable action.

The Board notes the nature of Petitioner's misconduct and the technicality for which his NJP was set aside. The Board's finding, however, is based on the recommendations as depicted by

the Marine Corps advisory opinions. In this regard, the Board substantially concurs with the recommendations contained in the advisory opinions, and as such concludes that the documentation referencing the NJP should be completely removed from the record. This action should include, but not be limited to, the unit punishment book, administrative remarks entries, and the revocation of selection to gunnery sergeant letter.

The Board further concurs with the recommendation that Petitioner's request for reinstatement be denied. The Board concludes that his poor judgment, lack of integrity, compromising of good order and discipline, and failure to maintain the high standards of personal and professional performance expected of a staff noncommissioned officer were sufficient to warrant the revocation of his selection to gunnery sergeant.

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 all references of the NJP imposed on 7 August 1968 from his official military personnel file. The removal of this documentation should include, but not be limited to, the unit punishment book, administrative remarks, and the revocation of selection to gunnery sergeant letter.

b. That no further relief be granted.

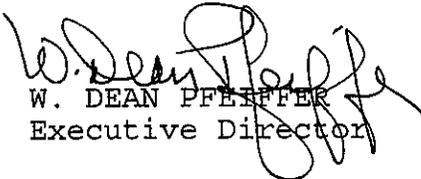
c. That only the material inconsistent with or relating to the Board's recommendation be removed from Petitioner's record. Further, that any material directed to be removed from Petitioner's record be returned to the Board, together with a copy of this Report of Proceedings.

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

Brian J. George
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