



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

TAL  
Docket No: 0516-10  
30 March 2010

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

Subj: REVIEW NAVAL RECORD OF [REDACTED]  
[REDACTED] USMC

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

Encl: (1) DD Form 149 with attachments  
(2) Case summary  
(3) HQMC JAM3 memo dtd 25 Feb 10  
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a member of the Marine Corps, filed enclosure (1) with this Board requesting the removal of all references to a nonjudicial punishment (NJP), held on 27 March 2009, from his naval record and removal of a promotion restriction dated 12 June 2009, from the Marine Corps Total Force System (MCTFS).

2. The Board, consisting of Messrs. [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 10 March 2010 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 Corp on 22 July 1997 and is currently serving on active duty.

d. Petitioner received NJP on 27 March 2009, for failure to obey an order or regulation and making a false official

statement. The punishment imposed was forfeiture of \$1673.10 pay per month for two months. The forfeitures were suspended for six months. He did not submit an appeal.

e. He executed a Permanent Change of Station move and his new Commanding Officer (CO) subsequently set aside the NJP for "clear injustice".

f. An advisory opinion (AO) from the Military Law Branch of Headquarters Marine Corps (enclosure (3)) recommends that Petitioner's request be granted. In this regard the AO states, in part, as follows:

...Applicant's CO set aside the 27 March 2009, NJP and requested all references to the NJP be removed from Petitioner's record. The Marine Corps Manual for Legal Administration states, "In addition to the officer who imposed the punishment, the following officers may also take remedial action: a successor in command to the imposing officer; the commander of any command to which the Marine is subsequently transferred; and, any other officer authorized to act on the punishment imposed," therefore, Petitioner's new CO was authorized to set aside the NJP...

The AO further recommends removing Petitioner's Unit Punishment Book entry, dated 27 March 2009, from his record and remove "PROM RESTR TERM DTE: 20090612" contained in his Basic Individual Record on MCTFS.

#### CONCLUSION:

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

The Board concludes that since the CO set aside the NJP, Petitioner's record must be corrected by removing the Unit Punishment Book entry, dated 27 March 2009, from his OMPF and the entry "PROM RESTR TERM DTE: 20090612" contained in his Basic Individual Record on MCTFS.

#### RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the NJP, dated 27 March 2009, and the removal of "PROM RESTR TERM DTE: 20090612" contained in the his Basic Individual Record on MCTFS.

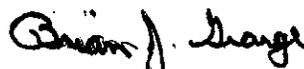
b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record and that no such

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.

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  
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