



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

BJG  
Docket No: 3999-10  
3 August 2010

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

Subj: [REDACTED]

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

Encl: (1) DD Form 149 dtd 14 Dec 09 w/attachment  
(2) HQMC JAM3 memos dtd 8 Jan 09 (sic) and 2 Mar 10  
(3) HQMC MMR/PERB memos dtd 7 and 8 Apr 10  
(4) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed written application, enclosure (1), with this Board requesting, in effect, that his naval record be corrected by removing the fitness report for 8 December 2007 to 8 August 2008, a copy of which is at Tab A. He also impliedly requested removing all references to his nonjudicial punishment (NJP) of 7 August 2008, removing the Commandant of the Marine Corps (CMC) (MMPR-2) letter dated 17 December 2008, Subject: Revocation of Selection from the FY (Fiscal Year) 2008 Reserve Gunnery Sergeant Selection Board (SMCR) (Selected Marine Corps Reserve), and promoting him to gunnery sergeant with a date of rank and effective date of 1 August 2008.

2. The Board, consisting of Mses. Countryman and Guill and Mr. Storz, reviewed allegations of error and injustice on 29 July 2010, and pursuant to its regulations, determined that limited relief should be granted. 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. Petitioner exhausted all administrative remedies which were available under existing law and regulations within the Department of the Navy.

b. The NJP was set aside because the only punishment awarded, the revocation of Petitioner's selection for promotion by the FY 2008 Reserve Gunnery Sergeant Selection Board, was not a legal punishment.

c. In enclosure (2), the Headquarters Marine Corps (HQMC) Judge Advocate Division has commented to the effect that Petitioner's record should be purged of all references to the NJP, as it has been set aside.

d. In enclosure (3), the HQMC Performance Evaluation Review Board (PERB) directed modifying the contested fitness report by removing all references to the NJP that has been set aside, but concluded that the report as modified should not be removed, as it documents misconduct of which Petitioner has not been exonerated.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of enclosures (2) and (3), the Board finds the existence of an error warranting partial relief, specifically, removal of the remaining references to the NJP that has been set aside. The Board finds the revocation of Petitioner's selection for promotion should stand, for the same reason the PERB did not direct completely removing the contested fitness report. In view of the above, the Board directs the following limited corrective action:

#### RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing all remaining references to his NJP of 7 August 2008, to include the following:

(1) Unit Punishment Book entry

(2) Second sentence, paragraph 1 of CMC (MMPR-2) letter dated 17 December 2008, Subject: Revocation of Selection from the FY 2008 Reserve Gunnery Sergeant Selection Board (SMCR). The sentence to be removed reads as follows: "On 7 August 2008, you received non-judicial punishment (NJP) for violation of Article 121 (larceny and wrongful appropriation) of the Uniform Code of Military Justice (UCMJ)."

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.

d. That the remainder of Petitioner's request be denied.

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

  
JONATHAN S. RUSKIN  
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