



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

BJG
Docket No: 6749-10
11 April 2011

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

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 9 Feb 10 w/attachments
(2) HQMC MMER/PERB ltr dtd 5 Nov 10
(3) MMER e-mail dtd 30 Mar 11
(4) HQMC MIO memo dtd 14 Jul 10
(5) 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 13 December 2007 to 12 December 2008 (copy at Tab A) and the service record page 11 ("Administrative Remarks (1070)") entry dated 12 December 2008 (copy at Tab B). Enclosure (2) shows the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has directed removing the contested fitness report.

2. The Board, consisting of Messrs. Green, Pfeiffer and Vogt, reviewed Petitioner's allegations of error and injustice on 7 April 2011, 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 which were available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. Enclosure (3) explains the basis for the PERB action to remove the fitness report at issue, which includes a determination that Petitioner had provided "convincing argument" indicating the command had confused him with another Marine who committed the violations reflected in both the fitness report and the contested counseling entry.

d. In enclosure (4), the HQMC office with cognizance over the subject matter of Petitioner's request to remove the page 11 entry has commented to the effect that this request should be denied, as the entry meets the elements of a proper page 11 entry. The information in enclosure (3) was not provided until after the advisory opinion at enclosure (4) had been submitted.

CONCLUSION:

Upon review and consideration of all the evidence of record, notwithstanding enclosure (4), and especially in light of the information at enclosure (3), the Board finds an injustice warranting removal of the page 11 entry. In view of the above, the Board recommends the following corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the service record page 11 ("Administrative Remarks (1070)") entry dated 12 December 2008. This is to be accomplished by physically removing the page 11 on which the entry appears, or completely obliterating the entry so it cannot be read, rather than merely lining through it.

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 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. 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

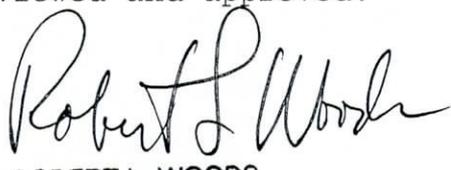
JONATHAN S. RUSKIN
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.



W. DEAN PFEIFFER

Reviewed and approved:



4/12/11

ROBERT L. WOODS
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