



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

TJR
Docket No: 7639-10
30 August 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
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the Marine Corps, filed enclosure (1) with this Board requesting that his naval record be corrected by removing all references to the nonjudicial punishment (NJP) imposed on 30 October 2009.
2. The Board, consisting of Messrs. [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 24 August 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 received NJP on 30 July 2009 for failure to obey a lawful order. The punishment imposed was a \$1,475 forfeiture of pay, which was suspended for six months.

d. On 23 April 2010 Petitioner submitted a written request for removal of the NJP citing, in part, that the punishment imposed was excessive. As a result of this request, on 7 May 2010, the commanding officer who imposed the foregoing NJP submitted a letter stating that it had been set aside, and as such all rights, privileges, and property that were affected were restored. Nonetheless, the NJP remained in the record.

e. An advisory opinion (AO) from the Marine Corps Military Law Branch, Judge Advocate Division (JAM3) dated 12 August 2010, states, in part, that the NJP should be removed. The AOs recommendation states, in part, as follows:

...an officer who imposes NJP may suspend, remit or mitigate any part or amount of the unexecuted portion of that punishment; may set aside in whole or in part that punishment, whether executed or unexecuted; and may restore all rights, privileges and property affected by that punishment... the same battalion commander who imposed the NJP approved the request to remove it from the official military records... the NJP should be removed.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the AO, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board concludes that since his commanding officer set aside the 30 October 2009 NJP, all references in his record regarding the NJP should be removed or obliterated.

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

RECOMMENDATION:

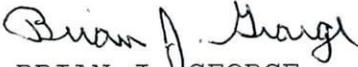
a. That Petitioner's naval record be corrected by totally obliterating or removing the 30 October 2009 NJP and all references thereto.

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.

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