



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

TJR  
Docket No: 9259-10  
4 November 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 attachments  
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former officer of the Marine Corps, filed enclosure (1) with this Board requesting, in part, that his record be corrected by removing the nonjudicial punishment (NJP) imposed on 3 September 2009. He further requested that all derogatory material regarding this NJP be removed.

2. The Board, consisting of Messrs. [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 2 November 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. In addition, the Board considered the advisory opinions (AO) provided by the Marine Corps Military Justice Branch, Judge Advocate Division (JAM3) dated 6 October 2010, and the Manpower Information Operations, Manpower Management Information Systems Division (MIO) dated 21 October 2010, copies of which are attached to enclosure (2).

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 3 September 2009 for failure to obey a lawful order and drunken and reckless driving. The punishment imposed was a \$2,218 forfeiture of pay, restriction for 60 days, and reduction to paygrade E-4. The forfeitures and restriction were suspended for six months.

d. On 3 September 2009 Petitioner was counselled regarding the foregoing NJP. As such, an administrative remarks entry, which he acknowledged and signed, was placed in his record. This entry stated, in part, as follows:

...In accordance with the MARCORSEPMAN paragraph 6105, you are being counselled for the following deficiency in your performance: You were found guilty at Squadron NJP on 090903 for violation of Article 92 (Violation of a lawful order) in that you operated a personally owned vehicle under the influence of alcohol with a blood alcohol content (BAC) of .09...

d. On 30 March 2010, the commanding officer who imposed the NJP set it aside and directed that all rights, privileges, and property affected by it be restored. The commanding officer further stated that the letter which set aside the NJP was not to be filed in Petitioner's record.

e. In an AO from JAM3 dated 6 October 2010, it was recommended that since the NJP was set aside, it should be removed from his record.

f. In an AO from MIO dated 21 October 2010, it was recommended that since Petitioner had committed the offenses of failure to obey a lawful order and drunken driving, his record, specifically, the administrative remarks (counselling) entry dated 3 September 2009, should remain in his record. The AO further recommended that the administrative remarks (counselling) entry be redacted to reflect the offenses only. In this regard, the wording "You were found guilty at Squadron NJP on 090903" should be removed from this entry.

#### CONCLUSION:

Upon review and consideration of all the evidence of record and especially in light of the two AOs, the Board finds the existence of an injustice warranting partial corrective action. In this regard, the Board concludes that the NJP should be removed from the record since it was set aside, and that the administrative remarks entry dated 3 September 2009 should be redacted by removing references to the NJP only.

In view of the above, the Board directs the following partial corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the NJP imposed on 3 September 2009, and all references thereto, from the record.

b. That Petitioner's naval record be corrected by redacting the wording "You were found guilty at Squadron NJP on 090903" from the administrative remarks entry dated 3 September 2009.

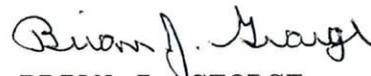
c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

d. 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.

e. That no further relief be granted.

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