



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

BJG
Docket No: 10692-10
16 February 2011

From: Chairman, Board for Correction of Naval Records
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 5 Sep 10 w/attachment
(2) HQMC JAM5 memo dtd 17 Nov 10 w/enclosure
(3) HQMC MIO memo dtd 28 Dec 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 service record page 11 ("Administrative Remarks (1070)") entry dated 14 January 2009 (sic), a copy of which is at Tab A.

2. The Board, consisting of Messrs. Bourgeois, J. Hicks and Ivins, reviewed Petitioner's allegations of error and injustice on 10 February 2011, and pursuant to its regulations, determined that the limited 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 the Board, Petitioner exhausted all administrative remedies which were available under existing law and regulations within the Department of the Navy.

b. In correspondence at enclosures (2) and (3), the Headquarters Marine Corps offices with cognizance over the subject matter of this case have commented to the effect that the request has merit and warrants at least partial relief, specifically, modification of the contested entry by removing "and failure to report this incident to your chain of command" and "report all incidents to your chain of command,". The opinion at enclosure (2) recommends that the contested entry be removed completely, if the Board finds Petitioner was not advised of his rights under Article 31(b), Uniform Code of Military Justice.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of enclosures (2) and (3), the Board finds an error warranting the partial relief described in paragraph 3.b above. In this regard, the Board is unable to find Petitioner was not advised of his rights. In view of the above, the Board directs the following limited corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by modifying the service record page 11 ("Administrative Remarks (1070)") entry dated 14 January 2009 (sic) by removing "and failure to report this incident to your chain of command" and "report all incidents to your chain of command,". This is to be accomplished by completely obliterating the above quoted language 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 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