



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

SJN
Docket No: 11205-10
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 dtd 9 Jul 10 with attachments
(2) Case summary with attachments
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a active duty gunnery sergeant of the Marine Corps, filed enclosure (1) with this Board requesting that the nonjudicial punishment (NJP) he received on 28 December 2007 and fitness report (FITREP) covering the period 1 July to 28 December 2007 be removed from his Official Military Personnel File (OMPF).

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED], and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 2 November 2010 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. In addition, the Board considered the advisory opinion (AO) provided by the Staff Judge Advocate to the Commandant of the Marine Corps dated 9 August 2010, a copy of which is 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 28 December 2007 for improper use of a government vehicle and was awarded a letter of reprimand. In accordance with the Marine Corps Separation Manual, paragraph 6105, a Navy-Marine Corps (NAVMC) form 118(11) counseling warning was placed in his service official OMPF

concerning the NJP. A thorough review of his OMPF held by the Headquarters Marine Corps does not reveal any documentation pertaining to the letter of reprimand that was awarded as a result of the NJP. Additionally, he received an adverse FITREP for the period covering 1 July to 28 December 2007 that states, in part, that it was submitted due to his receipt of NJP on 28 December 2007 for violation of Article 92, Uniform Code of Military Justice, for using a government vehicle for his personal use.

d. The AO in enclosure (2) stated, in part, that Petitioner admitted his misconduct to the improper use of a government vehicle and that he accepted NJP by pleading guilty. Further, in order to justify correction of a military or naval record, he bears the burden to show that the alleged entry or omission in the record was in error or unjust. Additionally, there were no errors in the submission of the FITREP and his guilty plea was enough to warrant an adverse report.

e. In his application, Petitioner states that he accepted full responsibility for his actions, in that he did drive and park a government vehicle away from his assigned place of duty. However, his actions were not malicious in nature and the punishment severely outweighed the crime. He stated, in part, that after attending an "All Hands" event in San Diego, California, he decided to stay overnight rather than make the 90 mile drive back to his recruiting station in Riverside, California, because he had to return to San Diego the following morning for a dental appointment, and that he parked the vehicle overnight at a Department of Defense school.

f. Additionally, Petitioner submitted a letter from his sergeant major dated 27 October 2010, addressed to the Deputy Branch Head, Manpower Management Support Branch (MMSB) that states, in part, that he had reviewed Petitioner's service record and affirmed that the letter of reprimand is not included. Further, that he was the command sergeant major at the time Petitioner received NJP on 28 December 2007 and the only document he provided was the counseling form page 11. He recalled that the commanding officer wanted to personally provide the letter of reprimand but apparently never completed the final draft. To his knowledge, the letter of reprimand awarded at NJP was never delivered because he would have been the one to assist Petitioner in the process of writing a rebuttal.

CONCLUSION:

Upon review and consideration of all the evidence of record, the AO, the letter from Petitioner's sergeant major, and the absence of the letter of reprimand in his OMPF, the Board finds the existence of an error and injustice warranting limited corrective

action. In this regard, the Board concludes that the NJP should be removed from his record because he never received his letter of reprimand. The FITREP covering the period from 1 July to 28 December 2007 should be removed from his official OMPF, and his page 11 counseling warning dated 28 December 2007, should be corrected by redacting all references regarding the NJP, since there is no record of what form of reprimand he was to have received as a result of his NJP. However, he was given a counseling warning with regard to his misuse of a government vehicle so the remainder of the counseling is correct. In view of the above, the Board directs the following limited corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the NJP dated 28 December 2007 as well as his FITREP covering the period from 1 July to 28 December 2007 from his official OMPF. Further, redact from his page 11 counseling entry dated 28 December 2007 the wording "NJP of (071228) for" and "You were found guilty and awarded a letter of reprimand which will be sent to your OMPF".

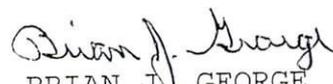
b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

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.

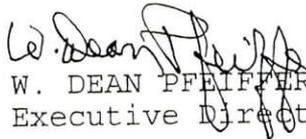
d. That no further relief be granted.

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