



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

TJR
Docket No: 319-11
14 April 2011

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

Subj: REVIEW NAVAL RECORD OF [REDACTED]
[REDACTED]

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

Encl: (1) DD Form 149 with attachments
(2) Case Summary
(3) Petitioner's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the Marine Corps, filed enclosure (1) with this Board requesting that his naval record be corrected by removing two Article 134 offenses listed on his unit punishment book (UPB) as a result of nonjudicial punishment (NJP) he received on 20 August 2009. This request includes any administrative remarks (page 11) entries, as well as any and all references to the Article 134 offenses.

2. The Board, consisting of Messrs. Blanchard, Genteman, and Sproul, reviewed Petitioner's allegations of error and injustice on 12 April 2011 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 opinion furnished by the Marine Corps Military Justice Branch, Judge Advocate Division dated 18 February 2011, a copy of which is provided in enclosure (1).

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 21 August 2009 for two specifications of failure to obey a lawful order by engaging in an inappropriate relationship with a perspective recruit applicant and wrongfully using a government cellular telephone for personal calls. He was also charged with two Article 134 violations, specifically, adultery by wrongfully having sexual intercourse with a woman that was not his wife and wrongfully communicating a threat to a perspective recruit applicant. The punishment imposed was a \$2,000 forfeiture of pay.

d. Petitioner's record contains an administrative remarks entry dated 21 August 2009 which reflects that he was counselled regarding the offenses for which he received NJP. However, the two specifications of Article 134 were redacted/crossed out since he was found not guilty of these offenses. The entry was signed by both the Petitioner and his commanding officer.

e. An advisory opinion received from the Marine Corps regarding Petitioner's request to remove the two Article 134 offenses recommended partial relief. In this regard, the advisory opinion states, in part, that the validity of the redacted/crossed out administrative remarks entry had been confirmed and as such those offenses should be removed from the record. The advisory opinion further recommends that the NJP not be removed from the record because the two Article 92 violations were legally valid as written and filed.

CONCLUSION:

Upon review and consideration of all the evidence or record, the Board concludes that Petitioner's request warrants partial favorable action. In this regard, the Board substantially concurs with the comments contained in the advisory opinion and concludes that since the administrative remarks entry was validated as amended, the two Article 134 offenses should be removed from the record. However, the Board further concludes that since the NJP was properly documented in the record with two specifications of Article 92 offenses, it should remain as a part of his record.

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

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing and/or totally obliterating all references regarding the two specifications of Article 134 offenses, specifically, adultery by wrongfully having sexual intercourse with a woman that was not his wife and wrongfully communicating a threat to a perspective recruit applicant.

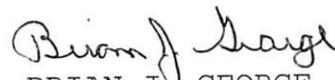
b. That any and all materials or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record and that no such entries or materials be added to the record in the future.

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.

d. That no further relief be granted.

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


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