



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

TJR  
Docket No: 1610-11  
3 March 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 with attachments  
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a enlisted member of the Marine Corps, filed enclosure (1) with this Board requesting that his record be corrected by removing derogatory material regarding his conviction by special court-martial (SPCM) of 23 April 2009.
2. The Board, consisting of Mr. Green, Mr. Genteman, and Ms. McCormick, reviewed Petitioner's allegations of error and injustice on 1 March 2011 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 was tried by SPCM on 23 April 2009 of wrongful use of cocaine during the period from 22 November to 1 December 2008). However, he pled, and the court found him, not guilty of the charge.

d. Regulations state, in part, that if a Marine is found not guilty of all charges at a court-martial, the documentation should not be retained in the record/official military personnel file (OMPF).

CONCLUSION:

Upon review and consideration of all the evidence of record the Board finds the existence of an injustice warranting corrective action. In this regard, the Board concludes that in accordance with regulatory guidelines which state that if a servicemember is found not guilty of all charges at a court-martial, any and all documentation referencing it should be removed. Since Petitioner was found not guilty of the charge of which he was tried, the documentation should be expunged from his record.

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

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing **any and all** references to and documentation regarding his trial by SPCM of 23 April 2009. This includes, but is not limited to the offense for which he was tried, the plea, and the convening authority's action dated 13 May 2009.

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.

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