



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

TAL  
Docket No: 3113-11  
19 May 2011

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

[REDACTED]

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

Encl: (1) DD Form 149 with attachments  
(2) Case summary  
(3) HQMC JAM3 memo dtd 2 May 11  
(4) Subject's naval record (CD)

1. Pursuant to the provisions of reference (a), Petitioner, a member of the Marine Corps, filed enclosure (1) with this Board requesting the removal of a nonjudicial punishment (NJP) dated 11 June 2010 from his Official Military Personal File (OMPF).

2. The Board, consisting of [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 18 May 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 enlisted in the Marine Corps on 16 December 2006 and is currently serving on active duty.

d. Petitioner received NJP on 11 June 2010, for failure to go to his appointed place of duty. The punishment imposed was reduction in paygrade and forfeiture of \$811 pay per month for two months. The forfeitures were suspended for six months. He did not submit an appeal.

e. Petitioner was screened at the Virginia Neurology and Sleep Center in February and March 2011 and diagnosed with obstructive sleep apnea and hypersomnia. He was provided a continuous positive airway pressure (CPAP) machine to aid him in obtaining adequate rest.

f. An advisory opinion (AO) from the Military Law Branch of Headquarters Marine Corps (enclosure (3)) recommends that Petitioner's request be granted. In this regard the AO states, in part, as follows: that based on the nature of the offenses adjudicated at the NJP and the statement by Petitioner's staff noncommissioned officer in charge regarding his drastic improvement since beginning treatment, it is highly probable that it was based solely on offenses that can now be attributed to a diagnosed medical condition.

The AO recommends that his request to remove the 11 June 2010 NJP from his OMFP be granted.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of enclosure (3), the Board concludes that Petitioner's request warrants favorable action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the NJP dated 11 June 2010.

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.

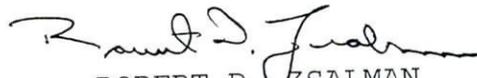
c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

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.

  
ROBERT D. ZSALMAN  
Acting Executive Director