



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

TJR
Docket No: 4442-11
28 April 2011

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 with attachments
(2) Case summary
(3) Excerpts from 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 derogatory material resulting from a special court-martial (SPCM) that was subsequently dismissed/set aside. The documentation to be removed is an adverse proficiency and conduct mark entry and a promotion restriction status and termination date entry.

2. The Board, consisting of Ms. Aldrich, Mr. Butherus, and Mr. Exnicios reviewed Petitioner's allegations of error and injustice on 26 April 2011 and, pursuant to its regulations, a 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 Manpower Information Operations, Manpower Management Information Systems Division (MIO/MMISD) dated 21 April 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 was tried by SPCM on 23 April 2009 and found not guilty. As a result the SPCM was dismissed and all documentation referencing it and the actions resulting from it were to be removed from the record.

d. Petitioner's record contains an adverse conduct mark entry of 3.0 dated 31 January 2009. It appears that this mark was not supported by a page 11 entry, which is required. Because Petitioner was not recommended for promotion, the record also contains a promotion restriction status code "0" with a termination date of 13 May 2009. The nonrecommendation for promotion is not related to the SPCM.

e. An advisory opinion from the Marine Corps (Code MIO MMISD) recommends the removal of the conduct mark since it was not supported by a page 11 entry. The opinion also states that the promotion restriction is not removed when it expires, and that the presence of it does not disqualify Petitioner for future promotion opportunities.

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 conduct mark entry was not supported by a page 11 entry, it should be removed from the record. However, the Board further concludes that since his nonrecommendation for promotion was not related to the SPCM and has since expired and does not disqualify him for future promotion, it should not be removed from the 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 the conduct (3.0) mark entry dated 31 January 2009.

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. 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