



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

TAL
Docket No: 4933-11
31 August 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) HQMC JAM1 memo dtd 8 Aug 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 all adverse material from his Official Military Personnel File (OMPF) regarding a nonjudicial punishment (NJP) dated 21 January 2011.

2. The Board, consisting of Mr. Sproul, Mr. McBride and Ms. Wilcher, reviewed Petitioner's allegations of error and injustice on 24 August 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 26 May 2006 and is currently serving on active duty.

d. Petitioner received NJP on 21 January 2011, for two instances of disobeying a lawful general order (II Marine Expeditionary Force (MEF) Drive Safe Order) operating vehicle under the influence of alcohol, and speeding. The punishment imposed was reduction in paygrade to E-3, forfeiture of \$961 pay per month for two months and restriction and extra duties for 45

days. The punishment was suspended. He appealed the NJP as being both unjust and disproportionate to the offenses allegedly committed. The appeal was denied on 11 March 2011.

e. The appeal was not submitted for a legal review prior to its denial. Pursuant to the Manual for Courts-Martial, Part V, para. 7(e), if an officer imposing NJP, awards more than 14 days of restriction, 14 days extra duties, forfeiture of more than seven days pay or reduction of one or more pay grades from the fourth enlisted pay grade, and the accused appeals his punishment as either unjust or disproportionate to the offense committed, then a legal review must be completed prior to action being taken on the appeal by a superior commander. All of the punishments imposed on Petitioner at his NJP were in excess of those that would require a legal review of the NJP once appealed. There was no legal review by a judge advocate on his NJP before his appeal was denied.

f. Petitioner was alleged to have violated the II MEF Drive Safe Order by operating a vehicle while under the influence of alcohol and speeding. However the II MEF Drive Safe Order does not discuss the operation of vehicles after the consumption of alcohol nor does it discuss speeding. It should be noted that Article 111 (Drunken Operation of a Vehicle), Uniform Code of Military Justice (UCMJ) prohibits operation of a motor vehicle on a military installation if the servicemember's blood alcohol content (BAC) is equal to or exceeds .10 grams of alcohol per 100 milliliter of blood. His BAC was registered at .07 and .06, which are below the UCMJ standard.

g. 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 Petitioner's rights on appeal were not satisfied and the NJP should be removed from his OMPF. The facts alleged in the drunken operation of a vehicle charge do not support that he violated the II MEF Drive Safe Order.

The AO recommends that his request to remove the 21 January 2011 NJP and from his OMPF 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:

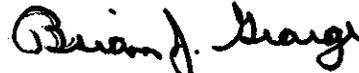
a. That Petitioner's naval record be corrected by removing the NJP dated 21 January 2011.

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