



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

TJR
Docket No: 4936-11
24 June 2011

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

Subj: [REDACTED]

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

Encl: (1) DD Form 149 with attachments
(2) Case Summary
(3) Subject'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 all references to the nonjudicial punishment (NJP) imposed on 7 December 2010.
2. The Board, consisting of Messrs. Bourgeios, McBride, and Midboe reviewed Petitioner's allegations of error and injustice on 21 June 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. In addition, the Board considered the advisory opinion (AO) furnished by Headquarters Marine Corps Military Justice Branch, Judge Advocate Division (JAM2) dated 10 June 2011.
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 7 December 2010 for wrongfully, through negligence, discharging a round from an M240 caliber machine gun, endangering the lives of Marines and Sailors. The punishment imposed was a \$2,582 forfeiture of pay, half of which was suspended for six months.

d. On 22 February 2011 the commanding officer who imposed the NJP set it aside and as such all property, privileges, and rights were restored to Petitioner.

e. An AO from JAM2 states, in part, that the NJP should be removed from the record because it was properly set aside by the commander who imposed it.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the AO, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board concludes that since the NJP was properly set aside, it should be removed or obliterated. In this regard, any and all documents, to include, but not limited to, the unit punishment book entry, administrative remarks entry, adverse fitness report, and administrative separation documentation, should be expunged from the record.

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

RECOMMENDATION:

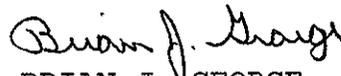
a. That Petitioner's naval record be corrected by totally obliterating or removing the 7 December 2010 NJP and all references thereto.

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.

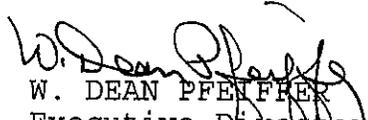
c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross-reference being made a part of Petitioner's naval record.

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