



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

JSR
Docket No: 5953-12
3 October 2012

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

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 30 May 12 w/attachment
(2) HQMC MIQ memo dtd 20 Jul 12
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the service record page 11 ("Administrative Remarks (1070)") entry dated 30 March 2006, a copy of which is at Tab A.

2. The Board, consisting of Messrs. Gorenflo, Grover and Midboe, reviewed Petitioner's allegations of error and injustice on 3 October 2012, 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. The contested entry includes the following:

Counseled this date concerning the following deficiency on 28 Mar 2006 for violations of the UCMJ [Uniform Code of Military Justice],

Specifically: Viol[ation] of Art[icle] 86: Absence without leave. You had a scheduled [sic] appointment at the Dental Clinic at Camp Foster but failed to report. You were asked why you missed your scheduled appointment and you stated, "I forgot."

c. Petitioner contends the entry is unjust because the reason he forgot his dental appointment was that he was "focused on completing the mission at work." He also asserts that his staff noncommissioned officer in charge ordered him not to make a rebuttal.

d. In correspondence attached as enclosure (2), the Headquarters Marine Corps (HQMC) office having cognizance over the subject matter of Petitioner's case has commented to the effect that the contested entry is proper, except for its reference to violations of the UCMJ, which are not deficiencies and must be resolved by means of disciplinary action. This advisory opinion recommends modifying the entry by deleting "violations of the UCMJ, Specifically: Viol of Art 86: Absence without leave."

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), the Board finds the existence of an error warranting partial relief, specifically, modification of the contested entry by removal of reference to a charge under the UCMJ. The Board notes that the entry will not read correctly unless the word "for," which appears before the language the advisory opinion recommends removing, is removed as well. The Board finds Petitioner's focus on his work, while commendable, did not excuse his having forgotten his appointment; and it is unable to accept his unsupported assertion that he was ordered not to submit a rebuttal. The Board observes that he may submit a rebuttal to HQMC (MMSB) for file in his record with the entry at issue. In view of the above, the Board directs the following limited corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the following from the service record page 11 ("Administrative Remarks (1070)") entry dated 30 March 2006: "for violations of the UCMJ, Specifically: Viol of Art 86: Absence without leave."

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.

d. That the remainder of Petitioner's request be denied.

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


JONATHAN S. RUSKIN
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 Regulations, 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.


F. W. DEAN PFEIFFER
Executive Director