



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

TJR
Docket No: 6563-12
15 October 2012

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 with attachments
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a member of the Marine Corps, filed enclosure (1) with this Board requesting that his record be corrected by removing derogatory material regarding the pending imposition of nonjudicial punishment (NJP) for drug use which is reflected on an administrative remarks entry (page 11) dated 9 August 2001 in his official military personnel record (OMPF).

2. The Board, consisting of Messrs. Dixit, Pfeiffer, and Whalen, reviewed Petitioner's allegations of error and injustice on 2 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. In addition, the Board considered the two advisory opinions (AO) provided by Headquarters Marine Corps, specifically, from the Military Justice Branch, Judge Advocate Division (JAM2) dated 9 August 2012 and Manpower Information Quality Assurance, Manpower Management Information Systems Division (MIQ) dated 12 September 2012, copies of which are attached to enclosure (2).

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's record contains an adverse administrative remarks entry (page 11) dated 9 August 2001 which reflects, in part, certifying that he was given the opportunity to consult with legal counsel regarding a pending NJP for violation of Article 112A (drug use) of the Uniform Code of Military Justice (UCMJ). However, the entry erroneously reflects violation of UCMJ Article 112A (drug use) in connection with a pending imposition of NJP, when in fact he was **not guilty** of the offense and the commanding officer **did not impose NJP**.

d. In the enclosed AOs from JAM2 and MIQ, it was recommended that Petitioner's record be corrected since he was not in violation of UCMJ Article 112A, did not receive NJP, and the entry itself does not conform with the requirements for proper documentation of a page 11 entry. As such, the adverse administrative remarks entry should be totally expunged from the record.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the AOs, the Board finds the existence of an error and injustice warranting corrective action. In this regard, the Board concludes that the adverse administrative remarks (page 11) entry should be totally expunged from the record.

In view of the above, the Board directs the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing administrative remarks (page 11) entry dated 9 August 2001.

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.


For W. DEAN PFEIFFER
Executive Director