



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

TJR
Docket No: 7599-12
25 September 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 a civil offense of driving under the influence of alcohol or driving while intoxicated which is reflected on an administrative remarks entry (page 11) dated 11 June 2009 in his official military personnel record (OMPF).

2. The Board, consisting of Ms. Guill, Mr. Marquez, and Mr. McBride, reviewed Petitioner's allegations of error and injustice on 18 September 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 advisory opinion (AO) provided by the Marine Corps Military Justice Branch, Judge Advocate Division (JAM1) dated 7 September 2012, a copy of which is 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 received nonjudicial punishment (NJP) on 11 June 2009 for two Uniform Code of Military Justice (UCMJ) offenses, specifically, **Article 92**/failure to obey a lawful order and **Article 107**/making a false official statement. The punishment imposed was forfeiture of \$2,000 and restriction and extra duty for 30 days, a portion of which was suspended for six months.

d. Petitioner's record contains an adverse administrative remarks entry (page 11) dated 11 June 2006 which reflects that, although he was eligible for promotion, he was not recommended due to the aforementioned NJP. However, the entry erroneously reflects violation of UCMJ Article 111 (drunken or reckless driving) in connection with a civil charge of driving under the influence of alcohol or driving while intoxicated.

e. In the enclosed AO from JAM1, it was recommended that Petitioner's record be corrected since he was not in violation of UCMJ Article 111, and 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 AO, 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 11 June 2009.

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