



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

TJR
Docket No: 8074-12
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
(3) 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 that his naval record be corrected by removing all references to the nonjudicial punishment (NJP) imposed on 18 August 2011 and the fitness report for the period from 16-19 August 2011. He further requested removal, from his official military personnel record (OMPF), any and all derogatory documentation (e.g., investigative reports, administrative discharge board (ADB) proceedings, etc.) surrounding the circumstances of the NJP, specifically, wrongful use of a controlled substance.

2. The Board, consisting of Messrs. Dixit, Pfeiffer, and Whalen, 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. In addition, the Board considered the advisory opinion (AO) furnished by the Headquarters Marine Corps Military Justice Branch, Judge Advocate Division (JAM) dated 14 September 2012.

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 placed an order for and received, without complete and proper research, some supplements that he was informed were legal. Upon receipt of the supplements, he noticed that the supplements were "for animal use only" and found to be "steroids." Nevertheless, upon conclusion of an investigation regarding the purchase of steroids, his commanding officer concluded that the foregoing facts were the basis for imposition of NJP. Subsequently, on 18 August 2011, Petitioner received NJP for wrongful possession on a scheduled II controlled substance, specifically, methadostenol. The punishment imposed was a \$2,620 forfeiture of pay. As a result of this NJP, he also received an adverse fitness report documenting the offense.

d. Subsequently, Petitioner submitted a request for a conditional waiver to the discharge authority which was denied. In this regard, he was subsequently processed for an administrative separation. After consulting with legal counsel he elected his right to have his case presented to an ADB. On 12 January 2012 an ADB determined that by a preponderance of evidence, the acts or omissions alleged did not constitute misconduct, and recommended retention in the Marine Corps. During these proceedings, Petitioner again stated that he made the mistake of not properly researching the supplements he purchased and that he honestly thought that they were legal.

e. The enclosed aforementioned AO from JAM states, in part, that the NJP and fitness report should be removed from the record, in part, because Petitioner was not guilty of wrongful (knowing and willful) possession of a controlled substance as defined regulatory guidelines because he actually believed the supplements he purchased were "legal" to purchase, possess, and/or use. The AO also states that the commanding officer (who imposed NJP) later indicated that Petitioner's intentions were to purchase legal supplements and as such did not support his earlier findings to impose it on 18 August 2011.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the AO from JAM, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board concludes that since the commanding officer and an ADB found that Petitioner did not knowingly and willfully possess a controlled substance, the NJP and all references in his record regarding 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, fitness reports, investigative materials/documents, and administrative separation documentation, etc., should be expunged from the record.

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

RECOMMENDATION:

a. That Petitioner's naval record be corrected by totally obliterating or removing the 18 August 2011 NJP, the fitness report for the period from 16 to 19 August 2011, and all other 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.

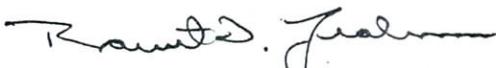
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)), it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.



BRIAN J. GEORGE
Acting Recorder

ROBERT D. ZSALMAN
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