



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

TAL  
Docket No: 10227-12  
2 November 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

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the Navy, filed enclosure (1) with this Board requesting the removal of all adverse material from his Official Military Personnel File (OMPF) regarding a nonjudicial punishment (NJP) dated 29 March 2012. He also requested restoration of his rank of HM2 (paygrade E-5).

2. The Board, consisting of Mr. Zsalman, Mr. Exnicios and Ms. Guill, reviewed Petitioner's allegations of error and injustice on 24 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. Enclosure (1) was filed in a timely manner.

c. Petitioner enlisted in the Navy on 11 February 2003 and served without disciplinary incident until 29 March 2012. He was arrested by civil authorities for driving under the

influence of alcohol. He states he self reported the arrest to his chain of command according to the requirement under Operational Navy Instruction (OPNAVINT) 55350.4D NAVY ALCOHOL AND DRUG ABUSE PREVENTION AND CONTROL.

d. On 29 March 2012, Petitioner received NJP for failure to obey a lawful order and driving under the influence. The punishment imposed was forfeiture of one half month's pay for two months, 45 days restriction (suspended for six months), 45 days extra duty and reduction in rate paygrade from E-5 to E-4. There is no record in his OMPF as to whether he filed an appeal.

e. On 3 September 2012, Petitioner submitted a request to his commanding officer for review of the constitutionality of his 29 March 2012 NJP citing the *U.S. v. Serianne* (USCAAF, 4 May 2010) decision. On 5 September 2012, the commanding officer forwarded a recommendation to this Board to set aside his NJP.

f. *U.S. v. Serianne* ruled that any self reporting requirement of any misconduct is in violation of the fifth amendment's protection against self incrimination.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of *U.S. v. Serianne* and the set aside letter from Petitioner's commanding officer, the Board concludes that there is an error and injustice, so Petitioner's request warrants favorable action in the form of relief. The Board particularly notes that there is no longer a requirement to self report misconduct.

After careful and conscientious consideration of the entire record, the Board concludes that Petitioner's NJP of 29 March 2012 should be removed from his naval record.

#### RECOMMENDATION:

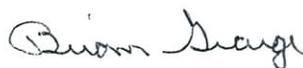
a. That Petitioner's naval record be corrected by totally obliterating or removing the 29 March 2012 NJP along with all associated documentation relating to it and that all property, privileges and rights affected by it be restored. Specifically, his paygrade of E-5 should be restored with his original date of rank and effective date.

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 ROBERT D. ZSALMAN  
Acting Executive Director