



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

TJR
Docket No: 1593-13
15 October 2013

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
(b) HQMC MFCO 5355.1
(c) SECNAVINST 5300.28D
(d) Federal Register, Vol. 76, No. 40

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) HQMC MJB JAD (JAM2) ltr dtd 27AUG13
(4) Petitioner's naval record/CD

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the Marine Corps, filed enclosure (1) with this Board requesting that his naval record be corrected by removing any and all derogatory material regarding the nonjudicial punishment (NJP) imposed on 1 June 2011 from his Official Military Personnel File (OMPF). This request includes, but is not limited to an administrative remarks (Page 11) entry also dated 1 June 2011. Enclosures (2) through (4) apply.

2. The Board, consisting of Messrs. Exnicios, Pfeiffer, and Whalen reviewed Petitioner's allegations of error and injustice on 8 October 2013 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 furnished by the Marine Corps Military Justice Branch, Judge Advocate Division (JAM2) dated 27 August 2013, a copy of which is provided in enclosure (3).

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 OMPF contains a unit punishment book entry which notes that he received an NJP on 1 June 2011 for wrongful use of Spice, a controlled substance as reflected in references (b) through (d). The record further reflects a page 11 which notes that he received counselling regarding the imposition of this NJP.

d. Correspondence dated 29 January 2012 from Petitioner's present commanding officer states, in part, that the NJP was improperly convened and that he was wrongfully accused of using a controlled substance, specifically, Spice. As such the NJP was set aside. In this regard, Petitioner asserts that the NJP was set aside because "Spice" is not a controlled substance that is prohibited by Navy/Marine Corps regulations, and as such he was not in violation of Article 112A of the Uniform Code of Military Justice (UCMJ).

e. Enclosure (3), an advisory opinion regarding Petitioner's request to remove the NJP and page 11 recommended relief. The advisory opinion states, in part, that the commander who imposed punishment or his/her successor may set aside punishment. In this regard, Petitioner's present commanding officer set aside the NJP, and it has been removed from the Marine Corps Total Force System (MCTFS) and should also be removed from his OMPF.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. The Board initially notes that Petitioner's assertion that Spice is not a controlled substance and its use is not prohibited by Navy/Marine Corps regulations is without merit. In this regard, references (b) through (d) apply. However, the Board substantially concurs with the comments contained in the advisory opinion and concludes that since the NJP was set aside and removed from the MCTFS, both it and the page 11 should be removed from Petitioner's OMPF.

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

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing and/or totally obliterating the NJP dated 1 June 2011 and the page 11 administrative remarks entry also dated 1 June 2011, as well as all 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.

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.


W. DEAN PFEIFFER
Executive Director