



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

TJR
Docket No: 1942-13
9 May 2013

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW NAVAL RECORD OF [REDACTED]
[REDACTED]

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Petitioner's naval record

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 April 2010 from his official military personnel file (OMPF). This request includes, but is not limited to the administrative remarks (Page 11) entries dated 1 and 7 April 2010.

2. The Board, consisting of Ms. Barrow, Mr. Blanchard, and Ms. Wilcher, reviewed Petitioner's allegations of error and injustice on 7 May 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. Enclosures (2) and (3) apply. In addition, the Board considered the advisory opinion furnished by the Marine Corps Military Justice Branch, Judge Advocate Division (JAM2) dated 23 April 2013, a copy of which is provided in enclosure (1).

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 a "company level" NJP for failure to obey a lawful order by consuming alcohol as a minor/underage drinking. However, the punishment imposed was restriction and extra duty for 45 days and a suspended \$378 forfeiture of pay, all of which is "battalion level punishment." The record further reflects two page 11 entries dated 1 and 7 April which note that he received counselling regarding the imposition of the foregoing NJP.

d. On 26 November 2012 Petitioner's present commanding officer, after reviewing the punishment imposed at the foregoing NJP, requested that it be expunged from the record because of the erroneously awarded "battalion level punishment" at a "company level" NJP.

e. An advisory opinion received from the Marine Corps regarding Petitioner's request to remove the NJP and page 11 entries recommended relief. In this regard, the advisory opinion stated, in part, that because the punishment imposed exceeded the maximum punishment authorized by an officer below the rank of major, the record should be corrected by removing the NJP and all documentation surrounding its imposition.

CONCLUSION:

Upon review and consideration of all the evidence or record, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board substantially concurs with the comments contained in the advisory opinion and concludes that since the NJP was improperly imposed and the page 11 entries were subsequently improperly written and filed based solely on the NJP, all documentation should be removed from the record.

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

RECOMMENDATION:

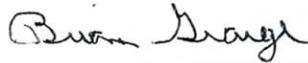
a. That Petitioner's naval record be corrected by removing and/or totally obliterating the NJP dated 1 April 2010 and the page 11 administrative remarks entries dated 1 and 7 April 2010, as well as all references thereto.

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