



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
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ARLINGTON VA 22204-2490

BAN
Docket No:NR02385-13
14 May 2013

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

Subj: REVIEW OF 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, a enlisted member of the United States Navy, filed enclosure (1) with this Board requesting, in effect, that his nonjudicial punishment (NJP) be set aside and that he be restored to pay grade E-6.
2. The Board, consisting of Messrs. Gorenflo, Pfeiffer, and Green, reviewed Petitioner's allegations of error and injustice on 2 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.
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. In 2012, Petitioner was stationed aboard the USS SPRUANCE (DDG 111) as an E6/PS1. On 29 February 2012, he received NJP for an unauthorized absence, failure to obey a lawful order and dereliction of duty. As a result, Petitioner was awarded a reduction in rate to E-5 and restriction of 30 days. Shortly thereafter, Petitioner transferred to the Helicopter Sea Combat Squadron THREE.

c. On 27 June 2012, the commanding officer (CO) of Petitioner's new command submitted a letter to set-aside the NJP of 29 February 2012. His rationale was that the NJP was based on inaccurate facts. "Based on a review of witness statements, phone interviews with his previous department head, and assessment of all facts available for review, I have determined that a clear injustice against the service member has occurred".

d. The CO also stated that the evidence supports that Petitioner could not have reasonably known the date or time to report which were the key elements of the NJP. Furthermore, indisputable evidence of miscommunication and the absence of a clear unified chain of command with a singular directive to Petitioner were identified. Finally, Petitioner's CO stated that he has been an outstanding Sailor while a member of his command and fully supports his NJP being set-aside.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. Although the Board notes his NJP and does not condone misconduct, it finds that the NJP was solely based on inaccurate facts and a clear miscommunication. Therefore, the Board concludes that his NJP of 29 February 2012 be removed and that he should be restored all rights and privileges. In view of the above, the Board recommends the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to remove his nonjudicial punishment dated 29 February 2012, and that all rights and privileges, to include back pay be restored.

b. That Petitioner be restored to E-6/PS1 and retain his original effective and Time In Rate date.

c. 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.

d. 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