



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

TJR
Docket No: 2713-13
9 May 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

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 her naval record be corrected by removing any and all derogatory material regarding the nonjudicial punishment (NJP) imposed on 27 July 2005 from her official military personnel file (OMPF). This request includes, but is not limited to any and all administrative remarks (Page 11) entries.

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 (30) apply. In addition, the Board considered the advisory opinion furnished by the Marine Corps Judge Advocate Research and Civil Law Branch (JAR7) dated 7 February 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 (UPB) entry which notes that on 27 July 2007 she received an NJP for attempted fraternization by allowing a man, not her husband, to

enter her bedroom and lay in bed with her and fraternization as evidenced by her fraternizing with a lance corporal. The punishment imposed is not reflected on the UPB entry.

d. The record reflects that the final disposition of the foregoing NJP was imposed/approved/signed by an "acting" regimental commander. In this regard, regulations state in part, that "acting commanders do not have the authority to impose NJP solely by virtue of their acting status." With that being said, the acting regimental commander was not authorized to impose this NJP.

e. An advisory opinion received from the Marine Corps regarding Petitioner's request to remove the NJP, in essence, recommended relief. In this regard, the advisory opinion stated, in part, that the authority to impose NJP cannot be delegated unless by specific authorization of the Secretary of the Navy, and that "acting" commanders do not have authority to impose NJP solely by virtue of their acting status.

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 imposed by an unauthorized officer it 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 27 July 2007 from the OMPF, 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.