



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

TJR
Docket No: 5400-13
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

Encl: (1) DD Form 149 with attachments
(2) Case Summary
(3) Petitioner's naval record
(4) HQMC MJB JAD (JAM2) ltr dtd 12SEP13

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 a Unit Punishment Book (UPB) entry dated 23 January 2003. Presumably, this request includes, but is not limited to any and all other references surrounding the circumstances of this material.

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 Headquarters Marine Corps Military Justice Branch, Judge Advocate Division, dated 12 September 2013, a copy of which is provided as enclosure (4).

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 record contains an administrative remarks (page 11) entry dated 31 December 2002 which reflects that he was restricted from promotion to lance corporal as a result of a

pending nonjudicial punishment (NJP) for wrongfully consuming alcohol while on a liberty risk program and wrongfully consuming alcohol beverages while under the legal drinking age of 21.

d. Petitioner received NJP on 23 January 2003 for two specifications of failure to obey a lawful order. The UPB entry for these offenses were reflected on page two and read, in part, as follows: PFC H... did violate a lawful order by wrongfully consuming alcohol while on liberty risk program; and PFC H... did wrongfully consume alcohol beverages while under the legal drinking age of 21.

e. An advisory opinion, enclosure (4), received from the Marine Corps regarding Petitioner's request to remove the inaccurate documentation recommended relief. In this regard, the advisory opinion states, in part, that "due to the command's failure to properly document the NJP, it is unclear whether the NJP proceedings were conducted properly and the command had the responsibility to ensure that legal proceedings were properly and accurately conducted and documented, but failed to do so in this case." As a result, all adverse material referencing the NJP should be removed from the Official Military Personnel File (OMPF).

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 documentation, as it appears in the record, is inaccurate as written and filed, all references 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 all references regarding the NJP of 23 January 2003, to include, but not limited to the UPB entry dated 23 January 2003 and the page 11 entry dated 31 December 2002.

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.

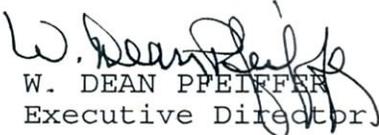
c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross-reference being made a part of Petitioner's naval record.

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