



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

TJR
Docket No: 5791-13
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

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 3 August 2009 from his Official Military Personnel File (OMPF). This request includes, but is not limited to an adverse fitness report (FITREP) for the period from 25 June to 3 August 2009, and any administrative remarks (Page 11) entries surrounding the NJP.

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 23 September 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 an NJP, which was imposed by the

"captain" company commander, for failure to obey a lawful order by physically operating a vehicle while under the influence of alcohol. In this regard, the punishment imposed was extra duty and restriction for 30 days and a \$1,088 forfeiture of pay, a portion of which was suspended for six months.

d. On 8 November 2009 he received an adverse FITREP for the period from 25 June to 3 August 2009 which referenced the foregoing NJP.

e. An advisory opinion received from the Marine Corps regarding Petitioner's request to remove the NJP and FITREP recommended relief. In this regard, the advisory opinion states, in part, that the captain company commander exceeded the maximum punishment authorized for imposition by an officer below the rank of major, and as such the NJP was not conducted in accordance with regulatory guidelines.

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 not properly conducted and the punishment imposed was not authorized by the captain company commander, it was improperly filed. Further, since the FITREP resulted from the NJP, it too was improperly written and filed. As a result of the foregoing, both the NJP and FITREP 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:

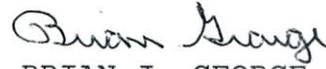
a. That Petitioner's naval record be corrected by removing and/or totally obliterating the NJP dated 3 August 2009 and the FITREP for the period from 25 June to 3 August 2009, as well as all references thereto.

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