



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

TJR
Docket No: 11120-14
8 July 2015

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

Subj: REVIEW NAVAL RECORD OF 5 U.S.C. 552(b) (6) USMC,
5 U.S.C. 552(b) (6)

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

Encl: (1) DD Form 149 with attachments
(2) Case summary with attachments
(3) Subject's naval record (excerpts)
(4) HQMC Military Justice Branch, Judge Advocate Division (JPL) memo dated 18FEB15
(5) HQMC Manpower Information Quality Assurance, Manpower Information Systems Division (MIQ) memo dated 15APR15

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 record be corrected by removing derogatory material, specifically, imposition of nonjudicial punishment (NJP) on 5 October 2013, and two administrative remarks (page 11) entries both dated 5 October 2013, which reflects that he was counselled regarding his misconduct and nonrecommendation for promotion due to his misconduct.

2. The Board, consisting of 5 U.S.C. 552(b) (6) 5 U.S.C. 552(b) reviewed Petitioner's allegations of error and injustice on 6 June 2015 and, pursuant to its regulations, determined that the partial 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 opinions (AO) provided by Headquarters Marine Corps (HQMC) JAM and MIQ, copies of which are attached as enclosures (4) and (5).

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 received NJP on 5 October 2013, for failure to obey a lawful order by wrongfully receiving and wrongfully appropriating four unexpended .50 caliber rounds of ammunition. The punishment imposed was a \$1,698 forfeiture of pay, restriction for 30 days, and reduction to paygrade E-2; a portion of which was suspended for six months.

d. Petitioner's record contains two page 11 entries dated 5 October 2013 which reflects, in part, that he was counselled concerning his misconduct as reflected in the NJP, and that although eligible for promotion, he was not recommended due to the NJP.

e. In the AO from HQMC JPL (enclosure (4)), it was recommended that the NJP and page 11 entries remain in the record. The AO from HQMC MIQ also recommended that the documents remain in the record; however, the AO also recommended that the page 11 entry regarding Petitioner's nonrecommendation for promotion be redacted because it contains an incorrect reference regarding the promotion restriction. In this regard, the AO recommended that the foregoing page 11 entry be corrected by changing the verbiage to reflect MCO P1400.32D "Par 1204.4K" vice Par 1204.4J.

f. In Petitioner's rebuttal to the recommendations by HQMC, he reiterates his request that the NJP and both page 11 entries be removed because his actions were simply an attempt to dissuade a constant request for a flight suit, and that he was not guilty of the offenses as reflected in the NJP.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the AOs, the Board finds the existence of an error and injustice warranting partial corrective action. In this regard, the Board concludes that the page 11 regarding the promotion restriction reflects an incorrect reference and as such should be redacted. The Board, in concurrence with the AOs, also concludes that the NJP and both page 11 entries should remain in the record.

In view of the foregoing, the Board directs the following partial corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by redacting the administrative remarks (page 11) entry dated 5 October 2013, regarding nonrecommendation for promotion and/or promotion restriction by replacing the verbiage "Viol of Art 121 Wrongful appropriation for a period of 6 months IAW MCO P1400.32D Par 1204.4J" as follows:

"Viol of Art 121 Wrongful appropriation for a period of 6 months IAW MCO P1400.32D Par 1204.4K."

b. That any and all 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.

c. That no further relief be granted.

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.

5 U.S.C. 552(b) (6)

T. J. REED
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.

5 U.S.C. 552(b) (6)

ROBERT J. O'NEILL
Executive Director