



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

TJR
Docket No: 11233-14
5 August 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/CD

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 nonjudicial punishment (NJP) dated 11 December 2012, which reflects the imposition of excessive punishment. This request includes, but is not limited to, removal of all references to the NJP, to include the offenses and punishment imposed, from his Official Military Personnel File (OMPF), the Marine Corps Total Force System (MCTFS), and her Electronic Service Record (ESR). Enclosures (2) and (3) apply.

2. The Board, consisting of 5 U.S.C. 552(b) (6), reviewed Petitioner's allegations of error and injustice on 5 August 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 (JPL dated 1 April 2015 and MIQ dated 15 May 2015), copies of which are attached to enclosure (2).

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 received NJP on 11 December 2012, for failure to obey a lawful order and reckless endangerment. The punishment imposed was reduction to paygrade E-3 extra duty for 60 days, and a \$1,998 forfeiture of pay. A portion of the punishment was suspended for six months.

d. In his application, Petitioner alleges that the NJP should be removed, in part, because the quantum of extra duty (60 days) exceeded the authorized maximum in accordance with regulatory guidelines.

e. The advisory opinions from the HQMC JPL and MIQ state, in part, that because Petitioner was in fact given punishment of 60 days extra duty which exceeded the authorized maximum, specifically, 45 days, the record should be corrected by removing the verbiage "EPD for 60 das" from his OMPF. Both AOs also state that because Petitioner was found guilty of the offenses for which he received NJP, the NJP should remain in the record.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the advisory opinions, the Board concludes that Petitioner's request warrants partial favorable action. In this regard, the Board concludes that the verbiage which references the quantum of extra duty for 60 days should be removed or obliterated from the record.

In view of the foregoing, the Board finds the existence of an error or injustice warranting the following partial corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by totally obliterating or removing the verbiage "EPD for 60 das" and all references thereto from his OMPF.

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 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