



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

TJR
Docket No: 610-14
21 May 2014

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/CD
(4) HQMC JAM2 memos dtd 26MAR14 and 30APR14

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 19 January 2012 from his Official Military Personnel File (OMPF) and the Marine Corps Total Force System (MCTFS). This request includes, but is not limited to any/all references thereto. Enclosures (1) through (3) apply.

2. The Board, consisting of Messrs. Exnicios, Hedrick, and Ruskin, reviewed Petitioner's allegations of error and injustice on 20 May 2014 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 opinions furnished by Headquarters Marine Corps (HQMC), copies of which are provided in 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 OMPF contains a unit punishment book entry which notes that he received an NJP on 19 January 2012 for making a false official statement (i.e., filing a fraudulent travel claim on or about 8 December 2009) and wrongful appropriation (i.e., receiving unauthorized payments on or about 11 December 2009, 4 February 2010, and 5 April 2010). This NJP was imposed more than three years after the date of the first offense which occurred in December 2009, and approximately two years after the second and third offenses which occurred in February and April 2010.

d. The record reflects that the NJP was imposed for an offense committed more than two years prior to its imposition, which is prohibited by regulatory guidelines. It also reflects that the succeeding commander amended the NJP to change a charge based on recalculation of entitlements, an action that was not within his authority.

e. Enclosure (4), two advisory opinions from the HQMC Military Justice Branch, Judge Advocate Division (JAM) regarding Petitioner's request to remove the NJP recommended relief. The advisory opinions state, in part, that because of the multiple discrepancies surrounding the facts regarding the offenses listed in the NJP and that it had been amended by a succeeding commander without jurisdictional authority, such actions render it in error. In this regard, the NJP, as well as any/all derogatory material which references it, should be removed from both the MCTFS and Petitioner's OMPF.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. The Board substantially concurs with the comments contained in the advisory opinions and concludes that since the NJP was improperly imposed and amended, it should be removed from both Petitioner's OMPF and the MCTFS.

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

RECOMMENDATION:

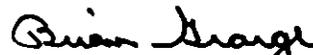
a. That Petitioner's naval record be corrected by removing and/or totally obliterating the NJP dated 19 January 2012, as well as all references thereto.

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.

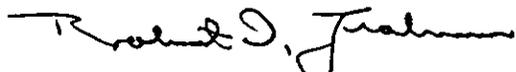
c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross-reference being made a part of Petitioner's naval record.

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.


ROBERT D. ZSALMAN
Acting Executive Director