



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

TJR
Docket No: 836-14
29 May 2014

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

Subj: REVIEW NAVAL RECORD OF [REDACTED]
[REDACTED]

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

Encl: (1) DD Form 149 with attachments
(2) Case Summary
(3) Service Record/CD
(4) HQMC JAM2 memo dtd 9MAY14

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 incomplete and inaccurate derogatory material, specifically, a unit punishment book (UPB) entry which documents a nonjudicial punishment (NJP) dated 31 January 2013. Presumably, this request includes, but is not limited to any and all other references (e.g., administrative remarks (page 11) entries, fitness reports (FITREP), etc.) surrounding the circumstances of this material.
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 opinion (AO) furnished by the Headquarters Marine Corps (HQMC), 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 a UPB which reflects that he received NJP on 31 January 2013 for failure to pay rent when due and failure to clean an apartment of dog urine and feces that caused \$10,000 in damages. The punishment imposed was reduction to paygrade E-4. Block 3. of the UPB does not reflect the signature of the commanding officer, and block 4., the Booker Statement, has been incorrectly edited to reflect a nondecisive reply to Petitioner's right to refuse NJP.

d. As a result of the NJP, Petitioner received an adverse FITREP for the period from 1 September 2012 to 31 January 2013, and was issued a page 11 counselling.

e. An AO, enclosure (4), received from the HQMC Military Justice Branch, Judge Advocate Division, regarding Petitioner's request to remove the incomplete documentation recommends relief. In this regard, the AO 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. As a result, all adverse material referencing the NJP should be removed from both the Official Military Personnel File (OMPF) and the Marine Corps Total Force System (MCTFS). In light of removing the NJP, any and all documentation surrounding it should also be removed.

CONCLUSION:

Upon review and consideration of all the evidence of record and especially in light of the favorable AO, the Board concludes that Petitioner's request warrants relief. In this regard, the Board substantially concurs with the comments contained in the AO and concludes that since the documentation, as it appears in the record, is incomplete and/or insufficient as written and filed, all references should be removed from the record. As a result of this action, Petitioner should be restored all rights and privileges resulting from the NJP.

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 31 January 2013, to include, but not limited to the UPB, any page 11 entries, and all references thereto.

b. That Petitioner's naval record be corrected by removing therefrom the following enlisted fitness report and related material.

<u>Date of report</u>	<u>Reporting senior</u>	<u>Period of report</u>
20130314	[REDACTED]	From 20120901 to 20130131

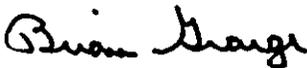
c. That there be inserted in Petitioner's naval record a memorandum in place of the removed report, containing appropriate identifying data concerning the report; that such memorandum state that the report has been removed by order of the Secretary of the Navy in accordance with the provisions of federal law and may not be made available to selection boards and other reviewing authorities; and that such boards may not conjecture or draw any influences as to the nature of the report.

d. 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.

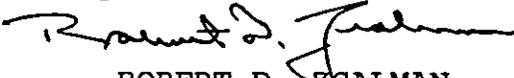
e. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross-reference being made a part of Petitioner's naval record.

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