



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

TJR
Docket No: 1145-14
20 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 ltr MMSB/PERB dtd 23JAN14
(5) HQMC ltr JAM dtd 2MAY14

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 31 July 2007 and the fitness report (FITREP) for the period from 16 December 2006 to 31 July 2007, which references the NJP, from both his official military personnel file (OMPF) and the Marine Corps Total Force System (MCTFS), where applicable. Enclosures (1) through (3) apply.

2. The Board, consisting of Mr. Dixit, Mr. Sproul, and Ms. White-Olsen, reviewed Petitioner's allegations of error and injustice on 14 May 2014 and, pursuant to its regulations, a 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 (AO) furnished by Headquarters Marine Corps (HQMC), copies of which are provided in 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's OMPF contains a unit punishment book entry which notes that he received an NJP for fraternization and failure to obey a lawful order. The punishment imposed was a written letter of reprimand. Subsequently, he received an adverse FITREP for the period from 16 December 2006 to 31 July 2007, which references the NJP and its punishment.

d. An AO received from the Performance Evaluation Review Board (PERB), enclosure (4), regarding Petitioner's request to remove the FITREP because the punishment imposed at NJP was not on file recommended relief be denied. In this regard, the AO states, in part, that the FITREP was administratively correct and procedurally complete as written and filed, and that even though the letter of reprimand was not on file, the NJP was properly recorded in the MCTFS.

e. An AO received from the HQMC Military Justice Branch, Judge Advocate Division (JAM), enclosure (5), regarding Petitioner's request to remove the NJP because the letter of reprimand was not filed in the record recommended relief be granted. The AO states, in part, as follows:

...all relevant adverse material is filed in the OMPF. A reprimand issued as NJP... is punitive. Punitive reprimands imposed on enlisted persons as NJP may be written or oral. In [this] case [the Marine] was awarded a letter of reprimand... and unless withdrawn or set aside by higher authority upon appeal... become part of the [OMPF]. [His] OMPF does not include a letter of reprimand. If no punishment is awarded [no letter of reprimand], the effect is the same as if the charges were dismissed... and no record of NJP shall be made in the... service record. Further the fact that the [Marine went to NJP] may not be referenced in his record.

CONCLUSION:

Upon review and consideration of all the evidence or record, the Board concludes that Petitioner's requests warrant favorable action. In this regard, the Board substantially concurs with the comments contained in the AO furnished by JAM and concludes that the NJP should be removed from the record since the letter of reprimand is not on file and as such negates the imposition of the NJP. It further concurs with the JAM AO in that the FITREP should also be removed because it was based solely of the imposition of 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 the NJP dated 31 July 2007 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>
20070927		From 20061216 To 20070731

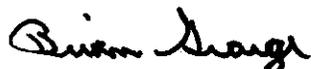
c. That there be inserted in Petitioner's naval record a memorandum in place of the removed report, containing appropriate identifying data concerning the report; that such memorandum state that the report has been removed by order of the Secretary of the Navy in accordance with the provisions of federal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

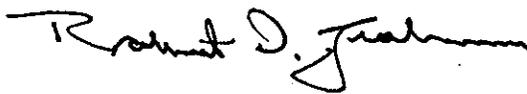
e. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross-reference being made a part of Petitioner's naval record.

4. 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.

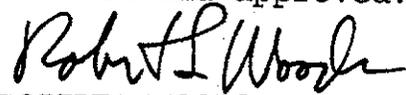
ROBERT D. ZSALMAN
Recorder


BRIAN J. GEORGE
Acting Recorder

5. The foregoing action of the Board is submitted for your review and action.


ROBERT D. ZSALMAN
Acting Executive Director

Reviewed and approved:

 7/2/14
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