



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

TJR  
Docket No: 4197-14  
18 February 2015

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

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

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

Encl: (1) DD Form 149 with attachments  
(2) Case Summary with attachments  
(3) Petitioner'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 nonjudicial punishment (NJP) documentation dated 14 March and 22 December 2012, and administrative remark entries (Page 11) dated 22 March 2012 and 2 October 2013. Presumably, this request includes, but is not limited to any and all other references surrounding the circumstances of the foregoing material from his Official Military Personnel File (OMPF), Electronic Service Record (ESR), and the Marine Corps Total Force System (MCTFS).

2. The Board, consisting of [REDACTED], reviewed Petitioner's allegations of error and injustice on 10 February 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 furnished by the Marine Corps Military Personnel Law Branch (JPL), Judge Advocate Division and Manpower Information Quality Assurance (MIQ), Manpower Information Systems Division, copies of which are attached with 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. On 14 March 2012, Petitioner received NJP for failure to obey a lawful order, making a false official statement, and wrongful cohabitation. The punishment imposed was reduction to paygrade E-3, a \$1,980 forfeiture of pay, and extra duty for 60 days. He also received a Page 11 entry which reflects that he was counselled regarding the NJP. On 11 December 2012, he received another NJP for failure to obey a lawful order and driving under the influence of alcohol. The punishment imposed was reduction to paygrade E-2, a \$1,670 forfeiture of pay, and extra duty for 60 days.

d. On 2 October 2013, Petitioner was counselled (a Page 11 placed in his record) regarding a waiver of his promotion restriction which was the result of his 11 December 2012, NJP.

e. Regulatory guidelines regarding authorized punishments at NJP state, in part, that when awarding extra duty consideration must be given to include fatigue or other duties and should not be for more than 45 consecutive days, and not "normally" extend more than two hours per day. These guidelines also prohibit performing extra duty on Sundays, except in limited circumstances.

f. In spite of the foregoing regulatory guidelines, Petitioner was awarded 60 days extra duty as punishment during both of his NJP hearings. However, Petitioner provided documentation which reflects that on at least one occasion (resulting from punishment awarded at NJP on 14 March 2012) he performed a total of 60 nonconsecutive days of extra duty over a period spanning 78 days. This documentation further reflects that he performed extra duty on Sundays and for periods exceeding more than two hours per day.

g. Both advisory opinions, enclosure (2), received from Headquarters Marine Corps (JPL and MIQ) regarding Petitioner's request to remove the NJPs and Page 11 entries recommend his request be denied because these documents were properly, factually, accurately, and legally written and filed. However, the AO from JPL recommends partial relief for Petitioner's disproportionate punishment, specifically, 60 days of extra duty awarded at both NJP hearings. In this regard, the AO recommends setting aside and/or reimbursement of the forfeitures awarded at the NJPs.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial favorable action.

In regards to the foregoing, the Board substantially concurs with the comments contained in the advisory opinions and concludes that there was no error or injustice regarding the imposition of the NJPs or the insertion of the Page 11 entries in the record since these documents were properly documented. In accordance with the foregoing, the NJPs and Page 11 entries should remain in the record. However, the Board further concludes that because Petitioner's punishment was disproportionate to the offenses and he performed extra duty which exceeded regulatory guidelines, reimbursement of the forfeitures awarded at the NJPs is warranted. In this regard, the record should be corrected to reflect that the forfeitures, at both NJP hearings, were set aside.

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

RECOMMENDATION:

- a. That Petitioner's naval record be corrected by removing and/or totally obliterating all references regarding the forfeitures awarded as punishment at the 14 March 2012 NJP and the 11 December 2012 NJP.
- b. That Petitioner's naval record be corrected to reflect that the total forfeitures awarded at both the 14 March 2012 and 11 December 2012 NJPs, specifically, \$3,650 were credited to his financial account.
- c. 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.
- d. 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.



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.



ROBERT J. O'NEILL  
Executive Director