



JN

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

JSR
Docket No. NR4745-14
12 March 2015

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

Subj: ~~REDACTED~~
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 4 May 13 w/attachments
(2) HQMC MMRP-13/PERB memo dtd 2 Apr 14
(3) HQMC JAM2 memo dtd 13 Sep 13
(4) HQMC MIQ memo dtd 8 May 14
(5) Subject's fax recvd 11 Aug 14
(6) HQMC JPL memo dtd 17 Oct 14 w/enclosures
(7) HQMC MIQ memo dtd 25 Nov 14
(8) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the fitness reports for 1 January to 27 April 2008, 28 April to 23 September 2008, 31 January to 31 October 2009, 1 November 2009 to 16 January 2010, 1 April to 8 September 2010 and 1 January to 31 December 2011 (copies at Tab A); and the service record page 11 ("Administrative Remarks (1070)") counseling entries dated 2 April 2008 with undated rebuttal, 11 June 2010 with undated rebuttal and 12 May 2011 (copies at Tab B). Enclosure (2) shows that the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has directed removing the contested fitness report for 1 January to 27 April 2008. Petitioner also requested reconstructing the service record page 12 ("Offenses and Punishments"). This last request was not considered, as Petitioner's Official Military Personnel File includes no derogatory page 12 entry.

2. The Board, consisting of Mses. Davis, Trucco and Wilcher, reviewed Petitioner's allegations of error and injustice on 12 March 2015, 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.

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. Petitioner asserts he did not commit any misconduct, so the contested fitness reports and counseling entries are false and unwarranted. The supporting evidence he provides includes documentation showing he was considered for administrative separation, but the administrative discharge board found that the evidence did not prove any of the acts or omissions alleged, so he was retained.

c. Enclosure (2), the report of the HQMC PERB in Petitioner's case, shows that the PERB directed removing the contested fitness report for 1 January to 27 April 2008, but commented to the effect that the five remaining reports at issue should stand.

d. In enclosure (3), the HQMC Judge Advocate Division (JAD) commented to the effect that the five remaining contested fitness reports and the page 11 entry dated 2 April 2008 should stand.

e. In enclosure (4), the HQMC Manpower Information Quality Assurance, Manpower Information Systems Division (MIQ) concurred with JAD in concluding the entry dated 2 April 2008 should stand.

f. In enclosure (5), Petitioner provided new evidence in support of his new request to remove the page 11 entries dated 11 June 2010 and 12 May 2011.

g. In enclosures (6) and (7), JAD and MIQ commented to the effect that the entry dated 11 June 2010 should be removed, but that the entry dated 12 May 2011 should stand.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (2) through (4) and (6) and (7), the Board finds the existence of an error and injustice warranting limited relief, specifically, removing the page 11 entry dated 11 June 2010 and the rebuttal. The Board finds that Petitioner's having been retained does not support further relief, noting that the documentation he provided did not specify what acts or omissions were alleged. In view of the above, the Board directs the following limited corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the service record page 11 ("Administrative Remarks (1070)") entry dated 11 June 2010 and Petitioner's undated rebuttal that begins "I am writing this rebuttal for the 6105 I am receiving, due to the CRC [Case Review Committee] results." This is to be accomplished by physically removing the page 11 on which the entry appears and the rebuttal, or completely obliterating the entry and rebuttal so they cannot be read, rather than merely lining through them.

b. That any material 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 material be added to the record in the future.

c. That the remainder of Petitioner's request be denied.

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.

Jonathan S. Ruskin

JONATHAN S. RUSKIN
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 Regulations, 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.

A handwritten signature in black ink, appearing to read 'R. J. O'Neill', written in a cursive style.

ROBERT J. O'NEILL
Executive Director