



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

TJR
Docket No: 4910-14
7 November 2014

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
(3) Petitioner's naval record
(4) HQMC MPLB JAD (JPL) ltr dtd 30SEP14

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 referencing a conviction by summary court-martial (SCM). This request includes, but is not limited to any and all other references surrounding the circumstances of this SCM as reflected in his Official Military Personnel File (OMPF), Electronic Service Record (ESR), and the Marine Corps Total Force System (MCTFS), where applicable.

2. The Board, consisting of Messrs. Exnicios, Midboe, and Ruskin, reviewed Petitioner's allegations of error and injustice on 28 October 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 Headquarters Marine Corps, a copy of which is provided as enclosures (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.

TJR

Docket No: 4910-14

c. Petitioner's record contains documentation regarding trial by SCM executed on 15 December 2005. However, on 26 October 2007, the findings and sentence were "set aside and dismissed" due to materially prejudicial error. Nonetheless, the documentation remained in the record.

d. An AO, enclosure (4), received from the Marine Corps recommends relief regarding Petitioner's request to remove the improperly filed documentation, specifically, the SCM, and references thereto. In this regard, the advisory opinion states, in part, that the SCM should be removed because the findings and sentence had been set aside and dismissed.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. 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 inaccurate as written and filed, all references should be removed from the record.

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 SCM execution on 15 December 2005, and 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.

TJR

Docket No: 4910-14

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