



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

TJR  
Docket No: 5273-14  
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 a nonjudicial punishment (NJP) dated 28 June 1999, and inaccurate derogatory material referencing assignment to weight control. 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. The record contains a MCTFS entry which states, in effect, that Petitioner was assigned to weight control on 21 April 1998, and removed from it on 17 July 2000. However, the record does not contain an administrative remarks entry (Page 11), which would have been the basis for such an entry in the MCTFS.
- d. On 28 June 1999, Petitioner received NJP for disrespect, communicating a threat, and assault. The punishment imposed was reduction to paygrade E-2, restriction and extra duty for 15 days, and a suspended forfeiture of pay. Nonetheless, on 1 November 1999, the commanding officer restored Petitioner's date of rank for paygrade to E-3 to 1 February 1988, with an effective date of 28 June 1999. However, this action negated the reduction to paygrade E-2 only.
- e. Petitioner's request for removal of the NJP is based solely on his assertion that the restoration to paygrade E-3 is evidence that the NJP was set aside, and that it only remains in his record as an administrative oversight.
- f. Both advisory opinions, enclosure (2), received from Headquarters Marine Corps (JPL and MIQ) regarding Petitioner's request to remove the NJP recommend his request be denied because the NJP was properly, factually, accurately, and legally written and filed, and his request for removal of the documentation is untimely. The AOs also note that the commanding officer only restored Petitioner's paygrade and "did not" set aside the NJP.
- g. An AO from JPL recommends Petitioner's request for removal of the entry regarding weight control in his MCTFS be granted because there is no Page 11 in his record to support the assignment to weight control or counselling for it, and the command failed to properly comply with weight control guidelines, had Petitioner been assigned to weight control. With that being said, the entry should be removed from the MCTFS.

CONCLUSION:

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

TJR

Docket No: 5273-14

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 since the NJP was not set aside by the commanding officer, as alleged by Petitioner; was properly documented, Petitioner did not appeal the NJP or demand court-martial; and filed his request in an untimely manner. In accordance with the foregoing, the NJP should remain in the record. However, the Board further concludes that the documentation regarding assignment to weight control, as it appears in the MCTFS, is inaccurate and all references thereto should be removed from the record.

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 assignment to weight control, to include, but not limited to the MCTFS entry for the period from 21 April 1998 to 17 July 2000.

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 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

TJR

Docket No: 5273-14

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.

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

ROBERT J. O'NEILL  
Executive Director