



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

TJR
Docket No: 5734-14
26 January 2015

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

Subj: REVIEW NAVAL RECORD OF [REDACTED] USMC,
XXX-XX-[REDACTED]

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

Encl: (1) DD Form 149 with attachments
(2) Case Summary with attachments
(3) Service Record (excerpts)
(4) HQMC JPL memo dtd 22DEC14

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 references regarding imposition of a nonjudicial punishment (NJP) for reckless endangerment. This request includes, but is not limited to any and all other documentation (e.g., administrative remarks (page 11) entries, fitness reports (FITREP), etc.) surrounding the circumstances of the NJP as reflected in his Official Military Personnel File (OMPF), Electronic Service Record (ESR), and the Marine Corps Total Force System (MCTFS), where applicable. Enclosures (1) through (3) apply.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 21 January 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. In addition, the Board considered the advisory opinion (AO) furnished by the Headquarters Marine Corps (HQMC), a copy of which is provided as enclosure (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.

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c. Petitioner's record contains reference to the imposition of NJP on 6 April 2009; however, the actual document is not contained in the record. In this regard, there is no unit punishment book (UPB) entry or record of NJP. However, the NJP is referenced and/or documented by an adverse fitness report (FITREP) for the period from 1 to 2 April 2009 and a statement of rebuttal dated 6 April 2009.

d. An AO, enclosure (4), received from the HQMC Military Personnel Law Branch, regarding Petitioner's request to remove the documents which references the NJP recommends relief. In this regard, the AO states, in part, that due to the command's failure to properly document the NJP, it is unclear whether the NJP proceedings were conducted properly, or if at all conducted. The AO further infers, in part, that the command had the responsibility to ensure that legal proceedings were properly and accurately conducted and documented, but failed to do so. As a result, all adverse material referencing the NJP should be removed from both the Official Military Personnel File (OMPF) and the Marine Corps Total Force System (MCTFS). In the absence of the documented NJP, any and all documentation surrounding it should also be removed.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's requests warrants favorable action. In this regard, and especially in light of the favorable AO, the Board substantially concurs with the comments contained in the AO and concludes that in the absence of the NJP document, the documentation referencing it, as it appears in the record, is improper as filed and as such all references should be removed from the record. As a result of this action, Petitioner should be restored all rights and privileges resulting from 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 all references regarding the NJP of 6 April 2009, to include, but not limited to the FITREP for the period from 1 to 2 April 2009, and all references thereto.

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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.

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