



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

Docket No: 2915-16  
DEC 12 2016

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  
(3) HQ JPL memo dtd 20Jun16  
(4) Subject's naval record (excerpts)

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the Marine Corps, filed enclosure (1) with this Board requesting the removal of all adverse material regarding the imposition of nonjudicial punishment (NJP) on 11 February 2016, from his Official Military Personnel File (OMPF), Electronic Service Record (ESR) and the Marine Corps Total Force System (MCTFS). This request includes restoration to Corporal according to his original date of rank. Enclosures (1) through (4) apply.

2. The Board, consisting of [REDACTED] reviewed Petitioner's allegations of error and injustice on 31 August 2016 and, pursuant to its regulations, determined that 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, Military Personnel Law Branch (JPL), dated 20 June 2016, copy of which is attached in enclosure (3).

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. On 2 February 2016, Petitioner pled guilty and was convicted by the [REDACTED] Municipal Division Court of one count of failure to stop at posted stop sign, one count of careless and imprudent driving, one count of failure to register his motorcycle, and one count of resisting arrest by fleeing. He was sentenced to pay fines totaling \$1,424.50.

d. On 11 February 2016, Petitioner received NJP for violation of Uniform Code of Military Justice (UCMJ) Article 95 (resistance, flight breach of arrest, and escape) and Article 134 (fleeing the [REDACTED] Police Department on his motorcycle and for disturbing the peace by operating his motorcycle at a speed in excess of 115 MPH, and ignoring multiple stop signs.) The punishment imposed was a reduction to lance corporal/E-3, extra duty for eight days, and a forfeiture of one-half month's pay (\$1,041.00) for two months. The Commanding Officer suspended the forfeitures for six months. Petitioner did not appeal.

e. Enclosure (3), an advisory opinion (AO) furnished by Headquarters Marine Corps (JPL), recommends relief of Petitioner's request. The AO states in part that, the Petitioner's NJP does not meet the requirement of section 0124b of JAGINST 5800.7F (JAGMAN), which limits a subsequent NJP to cases where the civilian punishment consisted solely of probation without rigid supervision or where the Service member's military duties make supervision impractical, where the civilian proceedings concluded with conviction for any reason other than acquittal, or where the interests of justice and discipline require further action under the UCMJ. Petitioner's NJP does not meet any of these criteria. Further section 0124c (1) JAGMAN require General Court Martial Convening Authority (GCMCA) permission before a command may impose NJP in cases where a civilian court has already adjudicated the same act or acts. No GCMCA approval was requested or granted.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of enclosure (3), the Board concludes that there is an error and injustice, so Petitioner's request warrants favorable action. In this regard, the Board substantially concurs with the comments contained in the AO furnished by JPL and concludes that the Petitioner has provided substantial evidence demonstrating the existence of a probable material error or injustice warranting the removal of the NJP.

#### RECOMMENDATION:

a. That Petitioner's naval record shall be corrected by obliterating or removing the 11 February 2016 NJP, from the UPB, ESR, and MCTFS and the corresponding page 11 entry.

b. That Petitioner's naval record should be corrected to reflect his original date of rank to paygrade E-4, and that all rights and privileges thereto were restored.

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c. 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.

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.

[REDACTED]

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.

[REDACTED]

Executive Director