



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

CRS
Docket No: 6245-00
6 November 2001

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

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

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a retired enlisted member of the Marine Corps, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected by removing the nonjudicial punishment (NJP) awarded him on 6 May 1998 and the competency review board proceedings that reduced him in rank.

2. The Board, consisting of Ms. Madison, Ms. Humberd, and Mr. Geisler, reviewed Petitioner's allegations of error and injustice on 31 October 2001 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. Enclosure (1) was filed in a timely manner.

c. Petitioner reenlisted in the Marine Corps on 23 May 1992 for six years, after more than thirteen years of prior active service. The record reflects that he subsequently extended for ten months. In 1996 he was promoted to the rank of GYSGT (E-7).

d. Petitioner served without disciplinary incident until 24 September 1997 when he received NJP for disrespect, two instances of willful disobedience of a lawful order, and two instances of failure to obey a lawful order. Punishment extended to a

suspended forfeiture of pay.

e. Subsequently, Petitioner was reassigned to recruiting duty. However, on 13 March 1998 he received a page 11 entry for unsatisfactory performance and was informed that he would be recommended for relief for cause and a reduction in rank from GYSGT (E-7) to SSGT (E-6). On 28 April 1998 Petitioner was ordered to spend his workday sitting outside the recruiting instructor's office. He was further required to request permission to make a "head call" or go to chow, and to sign in and out on a sign-in sheet that was publicly displayed. On 6 May 1998 such actions were initiated. Subsequently, the relief for cause was upheld, over his appeal.

f. Also on 6 May 1998 he received a second NJP for an unauthorized absence of a day and failure to obey a lawful order, in that he failed to report for duty when directed to do so. The punishment imposed consisted of forfeitures of \$1197 per month for two months. Petitioner appealed the NJP and the charge of failure to obey a lawful order was set aside by the appeal authority. However, the punishment was not changed. He then appealed the NJP for a second time to the commanding general, who denied the appeal.

g. On 21 May 1998 a competency review board (CRB) recommended reduction to SSGT. On 22 July 1998 the commanding general approved the reduction and denied Petitioner's appeal. Petitioner then appealed to the Commandant. While there is no record of the result of the appeal, it is assumed that it was denied. On 31 March 1999 Petitioner was transferred to the Fleet Marine Corps Reserve (FMCR) as a SSGT.

h. Petitioner argues that his problems with the command came from racism, his superiors were white and he was black. He admits that he was guilty of the unauthorized absence which resulted in the 6 May 1998 NJP, but that the punishment was too severe. He also feels that the CRB was not impartial and thus incorrectly reduced him.

i. An advisory opinion from the Staff Judge Advocate (SJA) to the Commandant of the Marine Corps recommends partial relief. In this regard, the SJA states that Petitioner's charge of racism is without merit. The opinion further states that Petitioner's request for relief in connection with the NJP is also without merit as he does not deny that he was an unauthorized absentee. Similarly, no legal error occurred with respect to Petitioner's CRB. However, the SJA also opines, that as a matter of equity the Board should consider suspending the reduction and reinstating Petitioner to GYSGT. This recommendation is based on the fact that Petitioner did not receive the full 60 day period on the substandard performance program and the possibility that the command was less interested in rehabilitation than in

retribution, as evidenced by the order of 28 April 1998 which "could reasonably be viewed as designed only to humiliate."

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. The Board concurs with the advisory opinion that the NJP was proper and should not be removed. In this regard, there is no evidence of racism and the Petitioner has presented none. However, the Board also concludes that the advisory opinion's other recommendation should be accepted and the record should be corrected to show that the reduction in rank to SSGT directed by the CRB process was suspended for six months.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval records be corrected wherever appropriate to show that the reduction in rate from GYSGT to SSGT, imposed on 22 July 1998, was suspended and he was never actually reduced to SSGT.

b. That the record be further corrected to show that Petitioner transferred to the FMCR on 31 March 1999 in the rank of GYSGT vice SSGT.

c. That no further relief be granted.

d. 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.

e. 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.

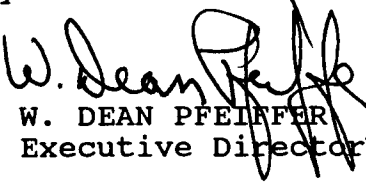
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting 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.


W. DEAN PFEIFFER
Executive Director