



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

TRG
Docket No: 5475-01
10 May 2002

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

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

Encl: (1) Case Summary
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the Navy filed an application with this Board requesting that her record be corrected by removing the nonjudicial punishment (NJP) of 23 April 1998 from her record.

2. The Board, consisting of Mr. Cooper, Mr. Bishop and Mr. Milner, reviewed Petitioner's allegations of error and injustice on 30 April 1992 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. Petitioner's application was filed in a timely manner.

c. Petitioner enlisted in the Navy on 28 January 1997 for four years. She received NJP on 23 April 1998 for failing to go to her appointed place of duty, making false official statements, and malingering. The punishment imposed was 60 days restriction, forfeitures of \$544 pay, and a suspended reduction in rate from seaman (SN; E-3) to seaman apprentice (SA; E-2). On 9 October 1998 the suspension was vacated due to continuing misconduct and she was reduced to SA. On 14 December 1998, the commanding officer set aside the vacation action and restored her to SN. Since the NJP, she had graduated from "A" school, been advanced in rate on several occasions and, on 2 March 2001, reenlisted for four years.

d. In her application, Petitioner requests removal of

entries on her Enlisted Qualifications History (page 4) concerning her promotion history and the entry showing that she received NJP "due to vacation of charges". Concerning this matter, the advancement regulations state that when a reduction in rate is set aside, it should be treated as if the reduction never occurred.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants partial favorable action. There is no evidence in the record, and Petitioner has submitted none, to indicate that the commanding officer intended to set aside the entire NJP. Although the reduction in rate was set aside, there is still punishment remaining. Therefore, the Board concludes that the NJP should not be removed from the record.

Since the commanding officer set aside the reduction in rate, the Board concludes that all evidence of the vacation of the suspension and the setting aside of the vacation action should be removed from her record.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing all evidence that she was reduced in rate on 13 October 1998 and that this reduction was set aside on 14 December 1998. Such action should include but not be limited to the following:

(1) the removal of the court memoranda (P601-7R) dated 13 October and 14 December 1998; and

(2) removal of the entries from the promotion history on the page 4 so it will indicate that she was never reduced.

b. 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.

c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with 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.


c. That Petitioner's request for removal of the NJP from the record be denied.

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.


for W. DEAN PFEIFFER
Executive Director