



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

JSR
Docket No. 05552-11
6 October 2011

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

Subj: [REDACTED]
REVIEW OF RECORD (RECONSIDERATION)

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

Encl: (1) DD Form 149 dtd 1 Aug 10 and other documents
from Subject's previous case, docket no. 9075-10
(2) Subject's letter dtd 10 May 11 w/enclosures
(3) HQMC JAR5 memo dtd 13 Jul 11
(4) Subject's ltr dtd 25 Sep 11 w/enclosures
(5) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed the written application at enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the report of misconduct dated 20 November 2008 and related documentation, a copy of which is at Tab A. As shown in enclosure (1), the Board denied this request on 9 December 2010. By enclosure (2), Petitioner requested reconsideration in light of a new supporting statement, unsworn, from the witness to the incident reported in the contested documentation.

2. The Board, consisting of Ms. Guill and Messrs. Chapman and Genteman, reviewed Petitioner's allegations of error and injustice on 6 October 2011, 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. In correspondence attached as enclosure (3), the Headquarters Marine Corps office having cognizance over the subject matter addressed in Petitioner's application has commented to the effect that the request has merit and warrants favorable action, if Petitioner explains why the witness statement was not submitted previously and if he provides additional basis, such as notarization, to support a conclusion that the statement is authentic.

c. In enclosure (4), Petitioner explained why the statement was not submitted before, and he provided a notarized sworn copy.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosures (3) and (4), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

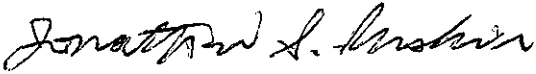
a. That Petitioner's naval record be corrected by removing the report of misconduct dated 20 November 2008 and related documentation (Official Military Personnel File, Commendatory Derogatory - Other, images 2 through 11).

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.

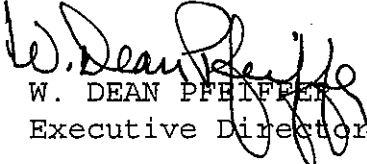
c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

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


JONATHAN S. RUSKIN
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