



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

SJN
Docket No: 06403-11
28 September 2011

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 with attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an active duty enlisted member of the Navy, filed enclosure (1) with this Board requesting that the nonjudicial punishment (NJP) he received on 17 May 2007 be removed from his Official Military Personnel File (OMPF).

2. The Board, consisting of Mr. Boyd, Mr. Whalen, and Mr. Exnicios, reviewed Petitioner's allegations of error and injustice on 27 September 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. On 17 May 2007, Petitioner received NJP for unauthorized absence and drunken or reckless operation of a vehicle. He received 60 days restriction, a suspended forfeiture of pay, and a suspended reduction in paygrade. In his application, he states that during his NJP, it was explained to him that if he were found not guilty of his civilian charge for driving under the influence (DUI) of alcohol, the NJP would be removed from his record. On 12 June 2007, the civilian court found him not guilty of DUI. Subsequently, he submitted a special request chit to have his NJP removed from his record. The request was routed through

his chain of command and approved by the commanding officer. However, the NJP was never removed from his OMPF. In his application, he submits a letter from LNC(SW/AW) C---, who was the command legal chief at the time of the NJP onboard the USS WASP (LHD 1), dated 21 June 2011, stating, in part, that Petitioner had requested to have his NJP removed from his record, and it had been approved up the chain of command, which included his own signature. Further, that due to the Chief's dereliction and the USS WASP personnel office, the NJP had not been removed from his record. Additionally, that the request chit submitted with Petitioner's application is authentic. He also submitted another statement from his leading Chief, MMCM S--- at the time of his NJP who also stated, in part, that his request to have his NJP removed was approved by the chain of command.

c. The Board noted that an enlisted performance evaluation covering the period from 16 March 2007 to 15 March 2008 with an overall trait average of 4.29, does not mention anything about his NJP of 17 May 2007. He was awarded his third Navy and Marine Corps Achievement Medal for professional achievement in the superior performance of his duties from January to July 2007, which also covered the period of his NJP. Finally, he was advanced to first class petty officer on 16 August 2010.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the supporting letters from Petitioner's former legal chief and leading chief, his evaluation and award which covered the period he received the NJP, and the fact that he was found "not guilty" of DUI, the Board concludes that his request warrants favorable action in the form of relief.

After careful and conscientious consideration of the entire record, the Board concludes that Petitioner's NJP of 17 May 2007 should be removed from his OMPF.

RECOMMENDATION:

a. That Petitioner's Administrative Remarks (NAVPERS 1070/613) documenting his NJP of 17 May 2007 be removed from his OMPF, along with all associated documentation relating to it.

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.

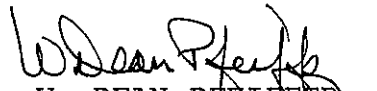
c. That any material direct to be removed from Petitioner's naval record be returned to this Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. 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.

ROBERT D. ZSALMAN
Recorder


BRIAN J. GEORGE
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 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.


W. DEAN PFEIFFER
Executive Director