



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

TAL
Docket No: 12631-11
8 May 2012

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

Subj: REVIEW NAVAL RECORD OF [REDACTED]

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

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) HQMC JAM2 memo dtd 10Feb12
(4) Subject's naval record (CD)

1. Pursuant to the provisions of reference (a), Petitioner, a former member of the Marine Corps, filed enclosure (1) with this Board requesting the removal of all adverse material from his Official Military Personnel File (OMPF) regarding nonjudicial punishments (NJP) imposed on 23 July and 24 September 2009. He further requested to be reinstated to his former rank of corporal paygrade (E-4), to change his characterization of discharge from general (under honorable conditions) with a separation code of JKA1 (pattern of misconduct (no board)) to honorable with a separation code of MBK1 (completion of service). Finally, he impliedly requested that his narrative reason for separation (misconduct) and RE-4 (not recommended for retention) be changed.

2. The Board, consisting of Mr. Pfeiffer, Mr. Ivins and Ms. Henkel, reviewed Petitioner's allegations of error and injustice on 28 March 2012 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 enlisted in the Marine Corps on 1 June 2004. He received NJP on 23 July 2009 for violations of Uniform Code of Military Justice (UCMJ) Articles 86 (unauthorized absence), 92 (failure to obey a lawful order), and 112 (drunk on duty). The punishment imposed was reduction in rank to paygrade E-3, 30 days restriction and extra duties, and a letter of reprimand. He was also awarded a forfeiture of \$1239.00, which was suspended for six months. On 24 September 2009, the suspended portion of the 23 July 2009 NJP sentence was vacated.

d. On 8 October 2009, he received NJP for violation of UCMJ Articles 91 (insubordinate conduct), and 92 (failure to obey a lawful order). The punishment awarded was reduction in rank to paygrade E-2 and 45 days restriction and extra duties. The forfeiture of \$1568.00 awarded was suspended for six months.

e. On 26 January 2010, the Commander, Navy Element, U.S. Strategic Command (USSTRATCOM) directed that he be separated from the Marine Corps with a general (under honorable conditions) discharge, separation code JKA1 (pattern of misconduct), and a reentry code of RE-4 (not recommended for reenlistment). The separation was approved and directed by the Commanding Officer, Marine Corps Detachment, Lackland Air Force Base, Texas.

f. An advisory opinion (AO) from the Military Justice Branch of Headquarters Marine Corps (enclosure (3)) recommends that Petitioner's request be granted. In this regard the AO states, in part, as follows: that Commanding Officer, Marine Enlisted Element, USSTRATCOM, and the Commander, Navy Element, USSTRATCOM lacked authority to reduce Petitioner in rank and discharge him. The AO recommends that his request to should be granted.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of enclosure (3), the Board concludes that Petitioner's request warrants favorable action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the NJPs dated 23 July and 8 October 2009 and reinstate his rank

of corporal, paygrade (E-4). That his record be further corrected by change his discharge from general (under honorable conditions), separation code of JKA1 (pattern of misconduct (no board)) to honorable with a separation code of MBK1 (completion of service), his narrative reason for separation (misconduct) be changed to "completion of service, and his RE-4 reentry code be changed to RE-1 (recommended for retention).

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. 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