



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

TJR  
Docket No: 78-12  
24 January 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) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the Marine Corps, filed enclosure (1) with this Board requesting that his naval record be corrected by removing all references to the nonjudicial punishment (NJP) imposed on 12 June 2009.

2. The Board, consisting of Messrs. Exnicios, Pfeiffer, and Zsalman, reviewed Petitioner's allegations of error and injustice on 19 January 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. In addition, the Board considered previous advisory opinions (AOs) provided by the Marine Corps Military Justice Branch, Judge Advocate Division (JAM2).

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. On 12 June 2009 Petitioner received NJP for two specifications of failure to obey a lawful order (i.e., unduly familiar personal relationship between an officer and enlisted member; and allowing a private first class to drive while under

the influence of alcohol (DUI)). The punishment imposed was reduction to paygrade E-4, restriction and extra duty for 30 days, and a \$1,063 forfeiture of pay.

d. Subsequently, on 18 July 2011, Petitioner's commanding officer, who imposed the NJP, submitted a letter setting it aside. The letter stated, in part, that the rationale for setting aside the NJP was due to a clear injustice on both offenses because the Marines involved in the case were both enlisted and did respect rank and grade as stated in Navy regulations regarding personal relationships between officers and enlisted Marines. Also, the private first class was acquitted of all DUI charges and this evidence could not have been furnished at the time the NJP was imposed. As a result of this set aside action, all rights, privileges, and property that were affected were restored. Nonetheless, documentation referencing the NJP remains in the record.

e. Previous AOs from the Marine Corps have concurred with the commanding officer who imposed the NJP and stated, in part, that the NJP and all documentation referencing it should be removed.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the letter from Petitioner's commanding officer which directed that the NJP be set aside and that all references in his record regarding it be removed, the Board concludes that Petitioner's request warrants favorable action.

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

#### RECOMMENDATION:

a. That Petitioner's naval record be corrected by totally obliterating or removing the 12 June 2009 NJP and all references thereto.

b. That any and all materials 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 materials 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