



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

TJR  
Docket No: 3053-13  
15 October 2013

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) Petitioner's naval record  
(4) HQMC MJB JAD (JAM2) ltr dtd 15AUG13

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the Marine Corps, filed enclosure (1) with this Board requesting that her naval record be corrected by removing two page 11 counselling entries dated 8 March and 10 May 2010. Presumably, this request includes, but is not limited to any and all other references surrounding the circumstances of this material.

2. The Board, consisting of Messrs. Exnicios, Pfeiffer, and Whalen, reviewed Petitioner's allegations of error and injustice on 8 October 2013 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 the advisory opinion furnished by Headquarters Marine Corps Military Justice Branch, Judge Advocate Division dated 15 August 2013, a copy of which is provided as enclosure (4).

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's record contains two administrative remarks (page 11) entries dated 8 March and 10 May 2010 which reflect that she was restricted from promotion consideration for April 2010 and again for June 2010 due to "pending legal action."

e. An advisory opinion, enclosure (4), received from the Marine Corps regarding Petitioner's request to remove the inaccurate documentation recommended relief. In this regard, the advisory opinion states, in part, that promotion restrictions referenced in regulatory guidelines do not list "pending legal action" as an authorized reason for a promotion restriction, the page 11 entries are not in compliance with a strict interpretation of regulatory guidelines, and as such may be removed from the record. As a result, all adverse material referencing the promotion restriction should be removed from the Official Military Personnel File (OMPF).

CONCLUSION:

Upon review and consideration of all the evidence or record, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board substantially concurs with the comments contained in the advisory opinion and concludes that since the documentation, as it appears in the record, is inaccurate as written and filed, all references should be removed from the record.

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

RECOMMENDATION:


a. That Petitioner's naval record be corrected by removing and/or totally obliterating all references regarding promotion restrictions for April 2010 and June 2010, to include, but not limited to the page 11 entries dated 8 March 2010 and 10 May 2010.

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.

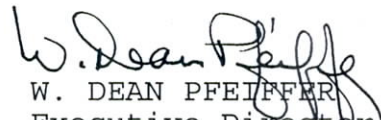
c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross-reference being made a part of Petitioner's naval record.

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