



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

TJR
Docket No: 5856-13
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 with attachments
(3) Subject's naval record/CD
(4) HQMC MJB JAD (JAM2) ltr dtd 12SEP13

1. Pursuant to the provisions of reference (a), Petitioner, a member of the Marine Corps, filed enclosure (1) with this Board requesting that his naval record be corrected by removing any and all references to the nonjudicial punishment (NJP) imposed on 28 May 2010. Presumably, this request includes, but is not limited to, any administrative remarks (page 11) entries and referencing the circumstances surrounding the NJP.

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 (AO) furnished by the Headquarters Marine Corps (HQMC) Military Justice Branch, Judge Advocate Division (JAM), dated 12 September 2013, a copy of which is attached 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 received NJP on 28 May 2010 for failure to obey a lawful order and drunken or reckless operation of a vehicle. The punishment imposed was reduction to paygrade E-2, extra duty and restriction for 45 days, and a \$1,622 forfeiture of pay. A portion of the punishment was suspended for six months.

d. On 25 February 2013 Petitioner's commanding officer set aside the NJP, stating in part, that it was prematurely conducted without complete evidence. In this regard, the commanding officer's action included, and was not limited to, removal of any and all other references to the NJP, and restoration of all rights and privileges affected by the punishment imposed.

e. An AO, enclosure (4), from JAM2 is in full concurrence with the 25 February 2013 NJP set aside and states, in part, that it and all references thereto should be removed from the record.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the AO from JAM, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board concludes that since the commanding officer set aside the NJP, all references in his record regarding it should be removed or obliterated. With that being said, any and all documents, to include, but not limited to, the unit punishment book entry, and administrative remarks entry, should be expunged from the record.

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 28 May 2010 NJP and all other 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