



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

HD

Docket No. NR933-13

7 March 2013

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

Subj: [REDACTED]  
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 8 Aug 11 w/attachments  
(2) PERS-832B memo dtd 12 Sep 11  
(3) DAJAG (Code 20) memos dtd 11 Mar and 10 Oct 08  
(4) PERS-00J ltr dtd 27 Aug 12  
(5) PERS-832 memo dtd 6 Feb 13  
(6) PERS-32 memo dtd 14 Feb 13

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing all reference to his nonjudicial punishment (NJP) of 3 May 2006; resetting the counter for his fifth Good Conduct Medal accordingly, from 2 May 2009 to 22 September 2008; removing the enlisted performance evaluation reports for 16 November 2005 to 3 May 2006 and 4 May to 9 June 2006 (copies at Tabs A and B, respectively) and modifying the enlisted performance evaluation report for 10 June to 15 November 2006 (copy at Tab C) to show a beginning date of 16 November 2005 in block 14.

2. The Board, consisting of Ms. Lapinski and Messrs. Dikeman and McBride, reviewed Petitioner's allegations of error and injustice on 7 March 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 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. In enclosure (2), PERS-832B, the Navy Personnel Command (NPC) office with cognizance over enlisted misconduct cases, commented to the effect that the Navy Military Personnel Manual (MILPERSMAN), article 5812-010 requires that the action of Petitioner's officer-in-charge (OIC) to set aside his NJP be approved by the Commander, NPC before that action can be considered valid.

c. Enclosure (3) reflects the position of the Office of the Judge Advocate General (OJAG) (Criminal Law) that the action of an officer in command to set aside an NJP must be treated as valid without further approval.

d. In enclosure (4), PERS-00J, the NPC legal office, advised that MILPERSMAN 5812-010 would be revised to reflect the OJAG guidance in enclosure (3).

e. In enclosure (5), PERS-832 commented to the effect that in light of enclosure (4) and the intent of Petitioner's OIC to set aside his NJP, his request should be approved.

f. In enclosure (6), PERS-32, the NPC office with cognizance over performance evaluations, commented to the effect that in light of enclosures (4) and (5), Petitioner's performance evaluation record should be corrected as he requested.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of enclosures (5) and (6), the Board finds an injustice warranting the following corrective action:

#### RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing all reference to his NJP of 3 May 2006.

b. That the counter for his fifth Good Conduct Medal be adjusted accordingly, from 2 May 2009 to what it was before his NJP of 3 May 2006.

c. That Petitioner's naval record be corrected further by removing the following enlisted performance evaluation reports and related material:

| Date of Report | Reporting Senior | Period of Report |           |
|----------------|------------------|------------------|-----------|
|                |                  | From             | To        |
| 15 May 06      | [REDACTED] USN   | 16 Nov 05        | 03 May 06 |
| 08 Jun 06      | [REDACTED] USN   | 04 May 06        | 09 Jun 06 |

d. That his record be corrected further by modifying as follows the enlisted performance evaluation report for 10 June to 15 November 2006, dated 27 November 2006 and signed by Lieutenant Commander [REDACTED] USN:

Block 14: Change from "06JUN10" to "05NOV16."

e. That appropriate correction be made to the magnetic tape or microfilm maintained by NPC.

f. 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.

g. 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 proceeding in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder

*Jonathan S. Ruskin*  
JONATHAN S. RUSKIN  
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 Regulations, 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