



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

TJR
Docket No: 6447-14
30 January 2015

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

Subj: REVIEW NAVAL RECORD OF [REDACTED]
USMC, XXX-XX-[REDACTED]

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

Encl: (1) DD Form 149 with attachments
(2) Case Summary with attachments
(3) Service Record (excerpts)
(4) HQMC JPL memo dtd 31JUL14
(5) HQMC MIQ memo dtd 3SEP14
(6) HQMC MMRP-13/PERB memo dtd 3DEC14

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 any and all references regarding imposition of a nonjudicial punishment (NJP) for willful disobedience. This request includes, but is not limited to any and all other documentation (e.g., administrative remarks (page 11) entries, fitness reports (FITREP), etc.) surrounding the circumstances of the NJP as reflected in his Official Military Personnel File (OMPF), Electronic Service Record (ESR), and the Marine Corps Total Force System (MCTFS), where applicable. Enclosures (1) through (6) apply.

2. The Board, consisting of [REDACTED] and [REDACTED] reviewed Petitioner's allegations of error and injustice on 13 January 2015 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 opinions (AO) furnished by the Headquarters Marine Corps (HQMC), copies of which are provided as enclosures (4) through (6).

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

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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 reference to the imposition of NJP on 11 May 2007; however, the actual document was not "uploaded" in the record until December 2012. Presumably, there was no unit punishment book (UPB) entry or record of NJP until five plus years after its imposition. However, the NJP was referenced and/or documented by an adverse fitness report (FITREP) for the period from 1 January to 11 May 2007.

d. An AO, enclosure (4), received from the HQMC Military Personnel Law Branch (JPL), regarding Petitioner's request to remove the documents which references the NJP recommends relief. In this regard, the AO states, in part, that due to the command's failure to properly document the NJP, it is unclear whether the NJP proceedings were conducted properly. The AO further infers, in part, that the command had the responsibility to ensure that legal proceedings were properly and accurately conducted and documented, but failed to do so. As a result, all adverse material referencing the NJP should be removed from the Official Military Personnel File (OMPF), the Electronic Service Record (ESR), and the Marine Corps Total Force System (MCTFS). In the absence of the properly documented NJP, any and all documentation surrounding it should also be removed.

e. Enclosures (5) and (6) are AOs from HQMC that are not in concurrence with the foregoing JPL recommendation for relief. In this regard, these AOs recommend Petitioner's request be denied because he did receive NJP on 11 May 2007, and was properly issued an adverse FITREP as a result of the NJP.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's requests warrants favorable action. In this regard, and especially in light of the favorable AO from HQMC JPL, the Board substantially concurs with the

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comments contained therein, and concludes that in the absence of a properly documented NJP, the documentation referencing it, as it appears in the record now, is improper as filed and as such all references should be removed from the record. As a result of this action, Petitioner should be restored all rights and privileges resulting from the NJP.

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 the NJP of 11 May 2007, to include, but not limited to the UPB, any page 11 entries, and all references thereto.

b. That Petitioner's naval record be corrected by removing therefrom the following enlisted fitness report and related material.

<u>Date of report</u>	<u>Reporting senior</u>	<u>Period of report</u>
20070611	[REDACTED]	From 20070101 to 20070511

c. That there be inserted in Petitioner's naval record a memorandum in place of the removed report, containing appropriate identifying data concerning the report; that such memorandum state that the report has been removed by order of the Secretary of the Navy in accordance with the provisions of federal law and may not be made available to selection boards and other reviewing authorities; and that such boards may not conjecture or draw any influences as to the nature of the report.

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.



T. J. REED
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.

A handwritten signature in dark ink, appearing to read "R. J. O'Neill", written in a cursive style.

ROBERT J. O'NEILL
Executive Director