



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

Docket No: 517-16

APR 18 2016

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

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

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

Encl: (1) DD Form 149 with attachments  
(2) Case summary  
(3) Subject's naval record (excerpts)

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the Navy, filed enclosure (1) with this Board requesting removal from his record, a nonjudicial punishment (NJP) imposed on 18 January 2009. Enclosures (1) through (3) apply.

2. The Board, consisting of [REDACTED], [REDACTED], and [REDACTED] reviewed Petitioner's allegations of error and injustice on 7 March 2016, 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 enclosures (1) through (3), naval records, 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. Although enclosure (1) was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider the application on its merits.

c. Petitioner enlisted in the Navy when he was 24 years old. He began a period of active duty on 25 November 2008, and served without disciplinary incident for about six months. However, on 18 June 2009, he received nonjudicial punishment (NJP) for violating Article 92 of the Uniform Code of Military Justice (UCMJ). Specifically, his failure to obey a lawful order due to underage drinking. The punishment imposed was restriction and extra duties for 45 days, forfeiture of \$699 pay for two months, and a reduction in paygrade to E-1. His reduction in paygrade was suspended for six months. Petitioner did not refuse the NJP or appeal the sentence.

e. In support of his request to remove the NJP, Petitioner stated that at the time of his NJP, he did not understand that he was charged with underage drinking, just that he had violated Article 92 of the UCMJ. He further explained that had he known the charge, he would have explained that he was not underage at the time of the incident.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concluded that Petitioner's request warrants relief by removing the NJP imposed on 18 January 2009. In this regard, the Board determined that, based on the birthdate annotated on various documents in his official military personnel file, Petitioner was not under the legal drinking age on the date of the incident and should not have been found guilty of underage drinking.

In view of the above, the Board directs the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the NJP imposed on 18 January 2009, and that all rights and privileges be restored.

b. 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.

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.

  
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.

  
Executive Director