



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

TRG
Docket No: 4007-03
20 August 2003

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

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

Encl: (1) HQMC Memo 1070 JAM6 of 29 Jul 2003
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the Marine Corps, filed an application with this Board requesting that his record be corrected by removing the nonjudicial punishment (NJP) of 7 January 2002 from his record.

2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Ms. [REDACTED] reviewed Petitioner's allegations of error and injustice on 6 August 2003 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.

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. Petitioner's application was filed in a timely manner.

c. Petitioner enlisted in the Marine Corps on 12 October 2000 at age 22. On 7 January 2002 he received NJP for disobedience of an order to stand watch as corporal of the guard. The punishment imposed was forfeiture of pay of \$373.00.

d. At enclosure (1) is an advisory opinion from the Head, Military Law Branch, Headquarters Marine Corps. The advisory opinion sets forth the facts of the case and states, in part, as follows:

.... Petitioner claims that his NJP was unjust since he had orders from his battalion commanding officer authorizing him to be in Portsmouth, Virginia,

at the time he was to stand duty.

a. Based on the available documentation¹, Petitioner's NJP was erroneous. Although Petitioner was given a verbal order to stand duty at 0200 on 26 December 2001 by his company first sergeant, Petitioner had been authorized by his battalion commander to depart his unit at 0800 on 25 December 2001, and to return no later than 0700 on 27 December 2001. The first sergeant had no authority to contradict the order of the battalion commander and his order was therefore unlawful.

b. Petitioner's record should be corrected by removing all entries reflecting his 7 January 2002 NJP. We advise that Petitioner should also receive all pay that was forfeited as a result of the NJP.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. Given the circumstances, the Board agrees with the comments contained in the advisory opinion. Therefore, the record should be corrected wherever necessary to remove all evidence of the NJP of 7 January 2002. This should include but not necessarily be limited to the removal of any related evaluation marks in proficiency or conduct

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the entry showing that he received NJP on 7 January 2002 from the Offenses and Punishments Page (page 12), and by removing any related evaluation marks in proficiency and conduct.

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.

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

¹ The command was contacted and was unable to locate the Unit Punishment Book or any of the NJP documents. Also, Petitioner's company 1st Sgt at that time ... was contacted and was unable to provide any additional material.

Petitioner's naval record.

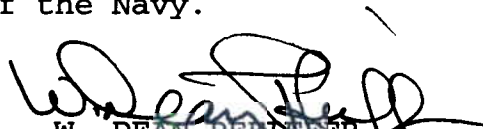
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
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