



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

CRS
Docket No: 5659-08
26 August 2008

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

Subj: [REDACTED] 46; REVIEW OF
NAVAL RECORD

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

Encl: (1) DD Form 149
(2) Petitioner's naval record

1. Pursuant to the provisions of reference (a), Petitioner applied to this Board requesting that her naval record be corrected by setting-aside the suspension of nonjudicial punishment vacation action and nonjudicial punishment (NJP) dated 7 April 2008.
2. The Board, consisting of Mr. [REDACTED], Mr. [REDACTED] and Ms. [REDACTED] reviewed Petitioner's allegations of error and injustice on 16 July 2008 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 enlisted in the Navy on 6 March 2002. On 20 November 2007 she received NJP for provoking speeches and gestures and assault. The punishment consisted of forfeiture of one-half month's pay per month for two months, 45 days of restriction and extra duty, and reduction to petty officer third class (SK3). The execution of the forfeiture of pay and reduction in rank were suspended for a probationary period of six months.
 - c. On 2 April 2008 a preliminary investigation into an early morning incident between Petitioner and SKSA P which occurred in a berthing compartment recommended that Petitioner be charged with violating Uniform Code of Military Justice (UCMJ) article 117, provoking speeches and gestures, by telling SKSA P to "keep my name out of your mouth", and violating UCMJ article

128, by striking SKSA P.

d. On 7 April 2008, Petitioner's commanding officer vacated the suspension of the reduction to SK3 which had been imposed on 20 November 2007, and imposed nonjudicial punishment on her for using provoking words towards SKSA P. The punishment consisted of 45 days of restriction and extra duties and reduction to SKSN, E-3, which was suspended for 6 months. The charge of assault was dismissed.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board finds that the words "keep my name out of your mouth", which were directed by a petty officer to a seaman apprentice, do not constitute provoking words as that term is defined in article 117, UCMJ. Accordingly, the Board concludes that the 7 April 2008 vacation action and nonjudicial punishment are unjust and should be set-aside.

As Petitioner's enlisted evaluation for the period in question is not in the record, the Board took no action concerning the report.

RECOMMENDATION:

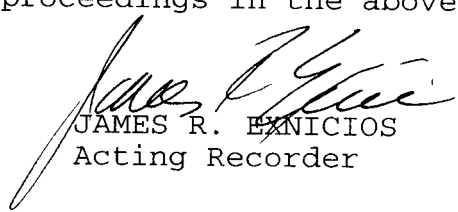
a. That Petitioner's naval record be corrected by setting-aside the 7 April 2008 nonjudicial punishment vacation action and nonjudicial punishment, removing all related documents from her naval record, and restoring all rights, benefits and privileges she lost as a result of the vacation action and nonjudicial punishment.

b. 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.

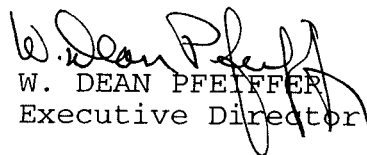
c. That no further relief be granted.

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


JAMES R. EXNICIOS
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