



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

BAN  
Docket No: 03087-09  
7 August 2009

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

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

Encl: (1) DD Form 149 with attachments  
(2) Case summary  
(3) PERS-832B memo dtd 16 Jun 09  
(4) PERS-32 memo dtd of 24 Jun 09  
(5) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the Navy, filed enclosure (1) with this Board requesting that his naval record be corrected by removal of a nonjudicial punishment (NJP) of 1 December 2006, reinstatement to IT1, pay grade E-6 effective 1 December 2006, removal of an 8 December 2006 adverse evaluation, and consideration for retroactive advancement to the rank of Chief Petty Officer.

2. The Board, consisting of Messers. [REDACTED] and [REDACTED] and Ms. [REDACTED], reviewed Petitioner's allegations of error and injustice on 22 July 2009 and, pursuant to its regulations, the Board 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. Enclosure (1) was filed in a timely manner.

c. Documentation in the record reflects that on 1 December 2006, Petitioner received NJP for two specifications of failure to obey a lawful order and making a false official statement.

d. The Petitioner made a Hotline Complaint on the basis that he received an NJP and derogatory evaluations from his command as an act

of reprisal. An investigation was conducted by the Navy Inspector General (IG) and his allegations were substantiated. The Department of Defense Inspector General (DoDIG) concurred with the IG's findings on 17 March 2009.

e. The cognizant offices of the Navy Personnel Command (NPC) have commented to the effect that Petitioner's request has partial merit and warrants favorable action. In particular, NPC recommends that the NJP and related documents be removed, the evaluations be removed, and that Petitioner be reinstated to E-6.

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 he was given NJP on 1 December 2006, derogatory evaluations, and a page 13 as an act of reprisal due to his IG complaint. The Board concludes that all references to the NJP should be removed from his record and that he receive full restoration to pay grade E-6/IT1, effective 1 December 2006. Additionally, the Board recommends Petitioner be advanced to E-7, effective 16 September 2007. However, final decision on this portion of Petitioner's request is reserved for the Secretary of the Navy and will be the subject of separate correspondence for final review and determination.

In view of the foregoing, the Board finds the existence of an injustice warranting the following limited corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the NJP dated 1 December 2006.

b. That Petitioner's advancement to pay grade E-6/IT1, be effective 1 December 2006, and all back pay and entitlements be restored.

c. That Petitioner's administrative remarks (page 13) pertaining to the 1 December 2006 NJP be removed.

d. That Petitioner's naval record be corrected by removing the fitness reports from 1 December 2006 to 15 March 2009.

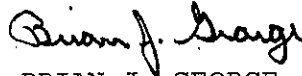
e. That there be inserted in Petitioner's naval record a memorandum in place of each removed report containing appropriate identifying data concerning the report; that the memorandum state that the report has been removed by order of the Secretary of the Navy in accordance with the provisions of federal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

f. That any and all material or entries inconsistent with or relating to the Boards recommendation be corrected, removed, or

completely expunged from Petitioner's record and that no such entries or materials 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.

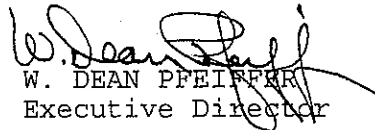
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.



BRIAN J. GEORGE  
Acting Recorder

ROBERT D. ZSALMAN  
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.



W. DEAN PFEIFFER  
Executive Director