



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

SMS

Docket No: 3948-09  
28 May 2009

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

Subj: REVIEW OF NAVAL RECORD [REDACTED]

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

Encl: (1) Case Summary

1. Pursuant to the provisions of reference (a), Petitioner, a member of the Marine Corps, applied to this Board requesting removal of an administrative remarks (page 11) service record entry dated 14 December 2007, as well as her rebuttal dated 20 December 2007.

2. The Board, consisting of Messrs. [REDACTED], [REDACTED], and [REDACTED], reviewed Petitioner's allegations of error and injustice on 27 May 2009, 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. On 5 May 2005, Petitioner reenlisted in the Marine Corps at age 35 after four prior periods of honorable service. On 2 February 2006, she was promoted to master sergeant. During the period 27 September to 1 October 2007, using a government computer, she exchanged personal electronic mail (e-mail) messages with a male master sergeant regarding their past relationship as well as three other Marines' conduct. These e-mail's were subsequently forwarded to one Marine that she referred to in the message which resulted in a request mast.

On 14 December 2007, she received an adverse page 11 service record entry regarding use of a government computer to send inappropriate e-mail's and was advised to adhere to regulations. On 7 January 2008, her commanding officer closed the request mast after a command investigation determined that the accusation of intentional sexual harassment could not be proven or substantiated, but found that there was sufficient evidence to show lack of professionalism by both master sergeants, and as a result of this finding, she received a page 11 service record entry and the male master sergeant involved received a non-punitive letter of caution. On 18 April 2008, she received a favorable transfer fitness report and was awarded a Meritorious Service Medal (MSM) for her duty performance during the period November 2003 to April 2008.

c. With her application, Petitioner states in essence that even though a command investigation found no evidence of sexual harassment, she received an adverse page 11 service record entry and the male master sergeant involved received a non-punitive letter of caution. She further states that her punishment was harsh considering that she has over 20 years of service with no disciplinary action. With her application, she submitted a copy of the e-mails as well as her favorable transfer fitness report and MSM that encompassed the period that she received the adverse page 11 service record entry.

d. Regulations authorize commanding officers to make adverse page 11 service record entries on Marines for misconduct, substandard performance, confirmed incidents of alcohol abuse, or for administrative measures. Regulations also authorize commanding officers to use non-punitive corrective action in such cases.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants relief. Specifically, the Board finds that although the adverse page 11 service record entry dated 14 December 2007, met the requirements established by regulations, the Board believes that disparate treatment occurred given that the male master sergeant involved received a non-punitive letter of caution. The Board further considers her overall service record, favorable transfer fitness report and MSM that was awarded by the same command that administered the adverse page 11 service record entry. Therefore, the Board finds that the page 11 service record entry dated 14 December 2007, and her rebuttal dated 20 December 2007, should be removed from her naval record.

RECOMMENDATION:

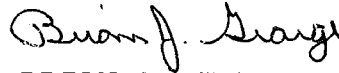
a. That Petitioner's naval record be corrected by removing the page 11 service record entry dated 14 December 2007, as well as her rebuttal dated 20 December 2007.

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.

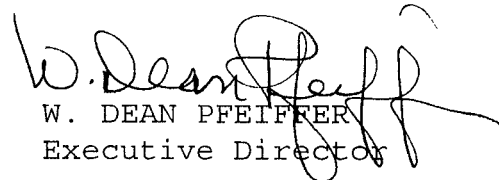
c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purposes, with no cross reference being made a part of Petitioner's naval record.

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.

ROBERT D. ZSALMAN  
Recorder

  
BRIAN J. GEORGE  
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 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