



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

JSR
Docket No. 4206-09
9 July 2009

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

Subj: [REDACTED]
REVIEW OF NAVAL RECORD (PARTIAL RECONSIDERATION)

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

Encl: (1) DD Forms 149 dtd 16 Apr 09 (two) w/attachments
(2) BCNR ltr to Subject JSR Docket No: 5828-08
less enclosure
(3) BCNR rept to SECNAV JSR Docket No. 8514-07
dtd 3 Apr 08 less enclosures
(4) HQMC MIO memo dtd 6 Jul 09
(5) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the service record page 11 ("Administrative Remarks (1070)") entries dated 27 July 2005 with her undated rebuttal (copies at Tab A) and 24 October 2005 (copy at Tab B). She also impliedly requested reconsideration of her previous request, docket number 5828-08, denied on 14 November 2008 (enclosure (2) refers), to amend the wording of the page 11 entry dated 11 April 2005 (copy at Tab C).

2. The Board, consisting of Ms. Wilcher and Messrs. Bowen and McBride, reviewed Petitioner's allegations of error and injustice on 9 July 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. As shown in enclosure (3), in Petitioner's first previous case, docket number 8514-07, the page 11 entry dated 1 August 2005, concerning her conviction of 6 June 2003 for assaulting her husband, was removed because the charge had been dismissed on 20 July 2005.

c. The contested entry of 27 July 2005 states Petitioner was convicted of assaulting her husband on 11 October 2004, that this made her subject to the Lautenberg Amendment of 1996 (concerning eligibility to carry firearms or ammunition), and that she was therefore ineligible for reenlistment without a waiver. She provides court documentation establishing that on 11 October 2004, she was charged with assaulting a neighbor, and that on 15 March 2005, she was convicted of that offense, which was not a qualifying conviction for purposes of the Lautenberg Amendment. The entry of 11 April 2005 refers to this conviction. The entry of 24 October 2005 states Petitioner no longer falls under the Lautenberg Amendment, because of the dismissal of 20 July 2005, and is now eligible for reenlistment.

c. In correspondence attached as enclosure (4), the Headquarters Marine Corps office having cognizance over the subject matter addressed in Petitioner's application has commented to the effect that her request to remove the entries dated 27 July and 24 October 2005 has merit and warrants favorable action. That office further recommended modifying the entry dated 11 April 2005 by removing "This has been your second offense of search [sic] nature."

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds the existence of an error warranting the relief recommended in enclosure (4). In this regard, the Board finds that the entry of 27 July 2005 should be removed as it is materially in error. The Board further finds that with the removal of both the entries dated 1 August and 27 July 2005, the entry of 24 October 2005 no longer serves any valid purpose; and the language, in the entry dated 11 April 2005, that "This has been your second offense of search [sic] nature" is no longer accurate. In view of the above, the Board directs the following corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the service record page 11 ("Administrative Remarks (1070)") entry dated 27 July 2005 and her undated rebuttal. This is to be accomplished by physically removing the page 11 on which the entry appears and the rebuttal, or completely obliterating the entry and rebuttal so they cannot be read, rather than merely lining through them.

b. That her record be corrected further by removing the service record page 11 entry dated 24 October 2005. This is to be accomplished by physically removing the page 11 on which the entry appears, or completely obliterating the entry so it cannot be read, rather than merely lining through the entry.

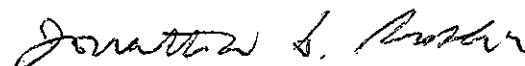
c. That her record be corrected further by modifying the service record page 11 entry dated 11 April 2005 by removing "This has been your second offense of search [sic] nature."

d. 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.

e. 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.

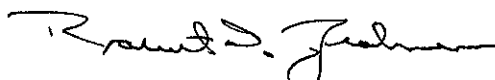
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
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.

A handwritten signature in cursive script, appearing to read "W. Dean Pfeiffer".

For W. DEAN PFEIFFER
Executive Director