



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

JSR
Docket No. 5278-09
13 August 2009

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

Subj: [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 5 May 09
(2) HQMC MIO memo dtd 4 Jun 09 w/enclosures
(3) 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 "Proficiency"/"Conduct" marks assigned for 31 January and 31 July 2008, "3.2"/"3.2" and "3.7"/"4.3," respectively (copy of pertinent data from the Marine Corps Total Force System (MCTFS) is in enclosure (2)).

2. The Board, consisting of Messrs. W. Hicks, Spooner and Swarens, reviewed Petitioner's allegations of error and injustice on 13 August 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. In correspondence attached as enclosure (2), the Headquarters Marine Corps office having cognizance over the subject matter addressed in Petitioner's application has commented to the effect that the contested marks for 31 January

2008 should be removed, but those for 31 July 2008 should stand. This advisory opinion noted that "Proficiency" marks below "3.0" and "Conduct" marks below "4.0" required justification, but the contested "Conduct" mark of "3.2" for 31 January 2008 lacked justification. This opinion specifically recommended that the marks to be removed be replaced with "NA [not applicable]"/"NA."

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), the Board finds the existence of an error and injustice warranting removal of the contested marks for 31 January 2008. In this regard, the Board recognizes that the "Proficiency" mark of "3.2" is above "3.0" and, therefore, did not require justification; however, the Board finds the assignment of the mark of "3.2" in "Conduct" without the requisite justification calls into question the fairness and accuracy of the corresponding mark in "Proficiency." The Board further concurs with enclosure (2) in concluding the marks for 31 July 2008 should stand. In view of the above, the Board directs the following limited corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing from the MCTFS data the "Proficiency"/"Conduct" marks for 31 January 2008, "3.2"/"3.2", and replacing them with "NA"/"NA."

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 purpose, with no cross reference being made a part of Petitioner's naval record.

d. That the remainder of Petitioner's request be denied.

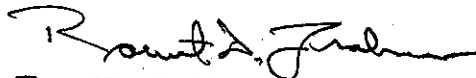
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the

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.


for W. DEAN PFEIFFER
Executive Director