



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

SJN
Docket No: 11764-10
9 December 2010

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

Subj: REVIEW OF NAVAL RECORD ICO [REDACTED]

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

Encl: (1) DD Form 149 with attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an active duty enlisted member of the Marine Corps, filed enclosure (1) with this Board requesting the removal of a NAVMC 118 (13) regarding a summary court-martial (SCM) conviction on 8 December 2008 from his Official Military Personnel File (OMPF).

2. The Board, consisting of Mr. [REDACTED], Ms. [REDACTED] and Mr. [REDACTED], reviewed Petitioner's allegations of error and injustice on 7 December 2010 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 8 December 2008, Petitioner was convicted by SCM of conspiracy to haze. He was sentenced to a reduction in paygrade, confinement, and a forfeiture of pay. The sentence was approved on 8 December 2008. However, with his application, he submits a supplemental convening authority action dated 8 January 2009, stating that the actions taken on 8 December 2008 were withdrawn. Further, that the findings of guilty and the sentence were disapproved, and that his rank, rights, and privileges were restored.

c. An advisory opinion furnished by the Headquarters Marine Corps, dated 23 November 2010, states, in part, that in order to justify correction of a military or naval record, Petitioner bears the burden to show to the satisfaction of the Board, or it must otherwise satisfactorily appear, that the alleged entry or omission in the record was in error or unjust. In this case, the advisory states, in part, that he has met the burden for relief. The convening authority chose to disapprove the findings and sentence. As a result, the SCM became a nullity and has had no effect on his career progression as indicated by his promotion to sergeant in 2010. Finally, there is no legal justification for maintaining the NAVMC 118 (13) reporting the SCM conviction or supplemental convening authority's action in this OMPF.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the advisory opinion from Headquarters Marine Corps, the Board concludes that Petitioner's request warrants favorable action in the form of relief.

After careful and conscientious consideration of the entire record, the Board concludes that Petitioner's NAVMC 118 (13) and supplemental convening authority's action dated 8 January 2009, regarding the SCM conviction on 8 December 2008, be removed from his OMPF.

In view of the above, the Board recommends the following corrective action.

RECOMMENDATION:

a. That Petitioner's NAVMC 118 (13) regarding the SCM conviction on 8 December 2008 and supplemental convening authority's action letter dated 8 January 2009, be removed from his official record, along with all associated documentation.

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 direct to be removed from Petitioner's naval record be returned to this 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


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