



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

JSR
Docket No. 4063-11
21 July 2011

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 25 Mar 11
(2) HQMC MIO memo dtd 1 Jun 11 w/enclosure
(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 or raising his "conduct" marks for 3 April 2008 (occasion "RD" (reduction in grade)), 21 April 2008, 31 July 2008 and 31 January 2010, reflected in the Marine Corps Total Force System (MCTFS), a copy of the pertinent portion of which is at enclosure (2).

2. The Board, consisting of Messrs. Boyd, Spooner and Swarens, reviewed Petitioner's allegations of error and injustice on 21 July 2011, 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 (HQMC) office having cognizance over the subject matter of Petitioner's case has commented to the

effect that the request has merit and warrants partial relief, specifically, changing the contested marks for 21 April and 31 July 2008, "3.8" and "3.7" (on a five-point scale), respectively, to "N/A [not applicable]," as conduct marks below "4.0" require supporting documentation, and there was no support in the record for these marks. That office recommends that the contested marks for 3 April 2008 ("2.9") and 31 January 2010 ("3.5") stand, as they are supported by a nonjudicial punishment (NJP) awarded on 4 April 2008 (copy at Tab A) and a service record page 11 counseling entry dated 9 November 2009 (copy at Tab B), respectively. Petitioner contends that the NJP does not support the mark for 3 April 2008, as he was reduced in grade. He contends that the page 11 entry does not support the mark for 31 January 2010, as it refers to pending legal action that resulted in acquittal.

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 warranting the partial relief HQMC recommended. The Board finds the NJP supported the mark for 3 April 2008, noting that the occasion for the mark was Petitioner's reduction in grade. The Board finds the page 11 entry supported the mark for 31 January 2010, as Petitioner has not established that the matters cited in this entry resulted in acquittal. In view of the above the Board directs the following limited corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by changing his MCTFS data to show the "conduct" entry for 21 April 2008 as "N/A" rather than "3.8."

b. That his record be corrected further by changing his MCTFS data to show the "conduct" entry for 31 July 2008 as "N/A" rather than "3.7."

c. 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.

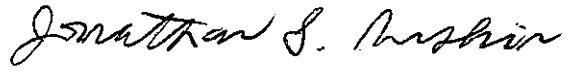
d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a

confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

e. 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