



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

BJG
Docket No: 6664-11
12 September 2011

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

Subj: [REDACTED] USMC, [REDACTED]
REVIEW OF NAVAL RECORD

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

- Encl: (1) DD Forms 149 dtd 29 Sep and 3 Dec 10, each w/attachment
(2) HQMC MMER/PERB memo dtd 18 Apr 11
(3) HQMC MMER e-mail dtd 30 Aug 11
(4) HQMC MMER/PERB memo dtd 13 Jun 11
(5) HQMC JAM2 memo dtd 29 Mar 11
(6) HQMC MIO memo dtd 22 Jun 11
(7) Subject's ltr dtd 28 Jul 11 w/encls
(8) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject hereinafter referred to as Petitioner, filed written application, enclosure (1), with this Board requesting, in effect, that her naval record be corrected by removing the fitness reports for 7 June 2008 to 31 March 2009 (copy at Tab A) and 15 July to 26 October 2010 (copy at Tab B). Enclosure (2) shows the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) has directed removing the contested report for 15 July to 26 October 2010. Petitioner further requested setting aside the nonjudicial punishment (NJP) of 26 October 2010 (Unit Punishment Book entry at Tab C) and removing the service record page 11 ("Administrative Remarks (1070)") entry dated 26 October 2010 (copy at Tab D).

2. The Board, consisting of Ms. Aldrich and Messrs. Pfeiffer and Spain, reviewed Petitioner's allegations of error and injustice on 8 September 2011, and pursuant to its regulations, determined that the limited 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 the Board, Petitioner exhausted all administrative remedies which were available under existing law and regulations within the Department of the Navy.

b. Enclosure (3) explains the basis for the PERB action directing the removal of the contested fitness report for 15 July to 26 October 2010.

c. Enclosure (4) shows that the PERB directed modifying the contested fitness report for 7 June 2008 to 31 May 2009 by removing, from section I (reporting senior's "Directed and Additional Comments"), "She is working diligently to meet PFT [physical fitness test] standards and return to weight standards." and further directed entering a memorandum in Petitioner's record showing periods of non-availability: "20080607-20080911 (PRO [proceed]-DEL [delay]-TVL [travel])" and 20090101-20090131 (ANN LV [annual leave]." Enclosure (4) further shows PERB commented to the effect that the report, as modified, should stand.

d. In enclosure (5), the HQMC Judge Advocate Division commented to the effect that the NJP should stand.

e. In enclosure (6), the HQMC Manpower Information Operations, Manpower Information Systems Division commented to the effect that the page 11 entry should be removed, as such an entry should not be used to document an NJP.

f. In Petitioner's letter at enclosure (7), she asserts she was not given a chance to consult with a military defense counsel as to whether she should accept NJP after the charge sheet had been materially altered.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of enclosures (4), (5) and (6), the Board finds an error and injustice warranting partial relief, specifically, removal of the page 11 entry. The Board is unable to find Petitioner was not given a chance to consult a military defense counsel about the alleged change to the charge sheet for her NJP. In view of the above, the Board directs the following limited corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the service record page 11 ("Administrative Remarks (1070)") entry dated 26 October 2010. 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 it.


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.


W. DEAN PFEIFFER
Executive Director