



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

TJR
Docket No: 7142-11
9 August 2011

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

Subj: [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 enlisted member of the Marine Corps, filed enclosure (1) with this Board requesting that his naval record be corrected by removing all references to the nonjudicial punishment (NJP) imposed on 28 July 2009.

2. The Board, consisting of Ms. Aldrich, Mr. Dunn, and Mr. Mann, reviewed Petitioner's allegations of error and injustice on 9 August 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. Enclosure (1) was filed in a timely manner.

c. Petitioner received NJP on 28 July 2009 for failure to obey a lawful order and conduct prejudicial to good order and discipline. The punishment imposed, which was suspended, was reduction to paygrade E-4 and extra duty for 30 days.

d. On 11 June 2011 the commanding officer who imposed the 28 July 2009 NJP submitted a letter stating, in part, that if he had the authority to set aside the NJP, he would. In this regard,

the commanding officer noted that, in accordance with the Manual for Courts-Martial, he no longer had the authority to set aside the NJP due to the "four month restriction" to exercise such authority. Nonetheless, the commanding officer recommended that the NJP be removed from the record because it was no longer deemed appropriate for the offenses committed.

e. An advisory opinion (AO) from the Headquarters Marine Corps Military Justice Branch, Judge Advocate Division (JAM1) dated 29 July 2011, states, in part, that since the intent of the commanding officer is to have the NJP set aside, it and any related documentation should be removed from the record.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the AO, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board concludes that since his commanding officer's intent is to set aside the 28 July 2009 NJP, it and all references surrounding the circumstances of it in his record should be removed or obliterated.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by totally obliterating or removing the 28 July 2009 NJP and all references thereto.

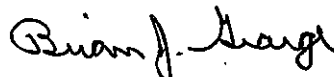
b. That any and all materials or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record and that no such entries or materials be added to the record in the future.

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.


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