



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

TJR
Docket No: 7230-12
25 September 2012

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

Subj: REVIEW NAVAL RECORD OF [REDACTED]

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

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

1. Pursuant to the provisions of reference (a), Petitioner, a former member of the Marine Corps, filed enclosure (1) with this Board requesting that his record be corrected by removing derogatory material regarding an offense of drunken or reckless driving which is reflected in his nonjudicial punishment (NJP) awarded on 15 December 2008.

2. The Board, consisting of Ms. Guill, Mr. Marquez, and Mr. McBride, reviewed Petitioner's allegations of error and injustice on 18 September 2012 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. In addition, the Board considered the advisory opinion (AO) provided by the Marine Corps Military Justice Branch, Judge Advocate Division (JAM2) dated 12 September 2012, a copy of which is attached to enclosure (2).

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 15 December 2008 for two Uniform Code of Military Justice (UCMJ) offenses, specifically, **Article 86/a** 103 day period of unauthorized absence (UA) and **Article 121**/larceny of \$200, the property of another Marine. The punishment imposed was reduction to paygrade E-1, forfeiture of \$1,346 and restriction and extra duty for 45 days. However, the unit punishment book (UPB) Booker statement (block 4) entry erroneously reflects that he was in violation of UCMJ Articles 86/(UA) and Article 111/(drunken or reckless driving).

d. Petitioner's record contains an administrative remarks entry (page 11) which correctly reflects that he was counselled regarding the imposition of the aforementioned NJP for UA and theft.

e. In the enclosed AO from JAM2, it was recommended that Petitioner's record be redacted to reflect the offense of UCMJ Article 121 (larceny) and that UCMJ Article 111 (drunken or reckless driving) be totally expunged from the record since he was not in violation of this article.

CONCLUSION:

Upon review and consideration of all the evidence of record and especially in light of the AO, the Board finds the existence of an injustice warranting corrective action. In this regard, the Board concludes that the reference to Article 111 (drunken or reckless driving) should be expunged from the record, and that the record be corrected to reflect Article 121.

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

RECOMMENDATION:

a. That Petitioner's naval record be corrected by changing the UPB Booker statement, block 4, to reflect the UCMJ Article 121 instead of the UCMJ Article 111.

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.

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