



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

TJR
Docket No: 3525-13
15 October 2013

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/CD

1. Pursuant to the provisions of reference (a), Petitioner, a member of the Marine Corps, filed enclosure (1) with this Board requesting that his record be corrected by removing derogatory material regarding a Uniform Code of Military Justice (UCMJ) offense, specifically, Article 117/using provoking speeches or gestures, which is reflected in his nonjudicial punishment (NJP) awarded on 30 August 2012.

2. The Board, consisting of Messrs. Exnicios, Pfeiffer, and Whalen, reviewed Petitioner's allegations of error and injustice on 8 October 2013 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 opinions (AO) provided by Headquarters Marine Corps (HQMC), copies of which are 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 31 August 2012 for a UMCJ offense, specifically, Article 80/attempts and Article 117/using

provoking speech and/or gestures. The punishment imposed was restriction and extra duty for 14 days.

d. Petitioner asserts that the Article 117 offense is in error since it does not apply to him or his situation because his spouse is not subject to the UCMJ.

e. In the enclosed AOs from HQMC (Military Law Branch, Judge Advocate Division (JAM2) dated 2 August 2013 and Manpower Information Quality Assurance, Manpower Information System Division (MIQ) dated 26 August 2013, it was recommended that Petitioner's record be redacted by removing the UCMJ Article 117 (using provoking speech and/or gestures) 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 AOs, the Board finds the existence of an error and injustice warranting corrective action. In this regard, the Board concludes that the reference to Article 117 (using provoking speech and gestures) should be expunged from the record, and that the record be corrected to reflect that he was only found guilty of Article 80 (attempts).

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

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the UCMJ Article 117 (using provoking speech and/or gestures) offense.

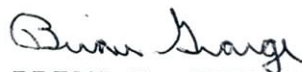
b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed, or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

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