



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

JSR
Docket No. NR5021 14
2 March 2015

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

Subj: ~~REDACTED~~
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 1 Apr 14 w/attachments
(2) MCRC memo dtd 5 Dec 14
(3) 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 his relief for cause (RFC) from recruiting duty at Recruiting Station (RS) Harrisburg be removed and that he be awarded the Marine Corps Recruiting Ribbon (MCRR) for his service there. Documentation of the RFC does not appear in Petitioner's Official Military Personnel File (OMPF), however, the entire RFC package is on file in the Headquarters Marine Corps (HQMC) Total Force Retention System (TFRS). A copy of that package is at Tab A. Petitioner also impliedly requested restoring his additional military occupational specialty (AMOS) 8411 (recruiter), setting aside the termination of his special duty assignment (SDA) pay, and removing from his data in the Marine Corps Total Force System (MCTFS) the draw case code "AO" (punitive relief from SDA).

2. The Board, consisting of Ms. McCain and Messrs. O'Neill and Relyea, reviewed Petitioner's allegations of error and injustice on 2 March 2015. Pursuant to its regulations, the Board 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 which were available under existing law and regulations within the Department of the Navy.

b. Enclosure (1) was filed in a timely manner.

c. On the basis of the findings and recommendations of a command investigation (enclosure (2) to the request for RFC at Tab A), Petitioner, a staff sergeant (pay grade E-6), was relieved for cause from recruiting duty at RS Harrisburg and subjected to nonjudicial punishment (NJP) proceedings on the ground that he had failed to report the sexual harassment of multiple applicants and recruiting poolees by a Gunnery Sergeant (pay grade E-7) P---. Petitioner's RFC was requested on 12 April 2013, and HQMC approved it on 24 July 2013. The second endorsement on the request for RFC directed that a page 11 entry reflecting the RFC be entered in Petitioner's service record, but no such entry appears in his OMPF. By reason of the RFC, he was not awarded the MCRR, despite his having served for more than the minimum required 30 months at RS Harrisburg; his 8411 MOS was voided; his SDA pay was terminated; and he was assigned the "AO" draw case code.

d. At his NJP proceedings conducted on 31 May 2013, it was determined that he did not warrant punishment. His transfer fitness report from RS Harrisburg, for 1 January to 13 July 2013 (copy at enclosure (1)), was fully favorable, even though the reporting senior, the Commanding Officer (CO), RS Harrisburg, requested Petitioner's RFC on 12 April 2013, and the reviewing officer, the CO, First Marine Corps District, favorably endorsed the request on 26 April 2013.

e. With his application at enclosure (1), Petitioner provided a copy of the letter dated 3 July 2013 submitted by the CO, First Marine Corps District to the Commanding General (CG), Marine Corps Recruiting Command (MCRC) via the CG, Marine Corps Recruit Depot/Eastern Recruiting Region, Subject: Request to Rescind [RFC] Package in Case of [Petitioner]. Paragraph 3 of this letter stated the following:

While inappropriate for a Staff Sergeant to continuously counsel a Gunnery Sergeant, [Petitioner] had the moral courage to confront Gunnery Sergeant P--- and instruct him to stop [his misconduct]. [Petitioner] also continued to inform the ARI [Assistant Recruiter Instructor] about Gunnery Sergeant P---'s misconduct. The ARI was the senior

individual in this circumstance that did not act on the misconduct reported. [Petitioner] followed the proper reporting chain of command when he reported Gunnery Sergeant P---'s misconduct, therefore I do not feel his [RFC] should continue to be processed.

Petitioner's application also included a copy of the CG, Marine Corps Recruit Depot/Eastern Recruiting Region endorsement dated 10 July 2013 on the request to rescind Petitioner's RFC, which disapproved the request, stating that "Once [the ARI] was notified of the alleged misconduct and no corrective action was taken, it was a reasonable expectation that a Staff Non-Commissioned Officer in the Marine Corps would persist in utilizing their chain of command until appropriate action had been taken."

f. Petitioner contends the relief he requested should be granted because his fitness report reflects he had a successful recruiting tour, he completed more than the 30 months required for the MCRR, and he did not receive NJP "or any other negative or punitive paper work [sic]."

g. In enclosure (2), the MCRC has commented to the effect that Petitioner's application should be denied, because the RFC was proper in accordance with applicable directives and the responsibilities of a Marine assigned to recruiting duty, it was based on a thorough command investigation, and "the NJP result must be evaluated independent from the administrative RFC result in order to determine what is right for the Marine and the Marine Corps."

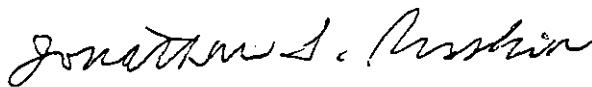
CONCLUSION:

Upon review and consideration of all the evidence of record, and notwithstanding enclosure (2), the Board finds an injustice warranting the requested relief. Specifically, the Board finds that the contested RFC was unwarranted. In this regard, the Board particularly notes that Petitioner did notify the ARI of Gunnery Sergeant P---'s misconduct, and in the Board's view, it was not incumbent on him to do more; he did confront Gunnery Sergeant P--- about his misconduct, which did show courage as Petitioner was junior to him; Petitioner's fitness report for the pertinent period contained nothing derogatory; his NJP proceedings resulted in no punishment being awarded; and the CO, First Marine Corps District, who had initially favorably endorsed the request for Petitioner's RFC, made a compelling case for rescinding it. In view of the above, the Board recommends the following corrective action:

RECOMMENDATION:

- a. That all documentation of Petitioner's RFC from recruiting duty at RS Harrisburg be removed from TFRS.
- b. That he be awarded the MCRR for his service at RS Harrisburg.
- c. That his naval record be corrected to show his 8411 AMOS was not voided, but has remained in effect continuously since it was assigned.
- d. That his record be corrected further to show his SDA pay was not terminated by reason of his RFC, but remained in effect until his transfer from RS Harrisburg on 13 July 2013.
- e. That his MCTFS data be corrected by removing the "AO" draw case code.
- f. 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 be added to the record in the future.

4. 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.



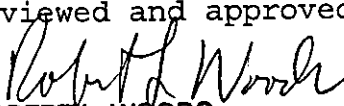
JONATHAN S. RUSKIN
Recorder

5. The foregoing report of the Board is submitted for your review and action.



ROBERT J. O'NEILL

Reviewed and approved:



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3/16/15