



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

SJN
Docket No: 7659-14
28 January 2015

From: Chairman, Board for Correction of Naval Records
To: Commandant of the Marine Corps

Subj: REVIEW NAVAL RECORD OF [REDACTED] USMCR,
XXX-XX [REDACTED]

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

Encl: (1) DD Form 149 with attachments
(2) Case Summary
(3) HQMC Advisory Opinion dtd 9 Dec 14

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the Marine Corps Reserve, filed enclosure (1) with this Board requesting, in effect, that his record be corrected by removing a special court-martial (SPCM) Promulgating Order dated 7 October 2013, and all derogatory materials regarding that SPCM after being found not guilty and being acquitted of all charges, from his Official Military Personnel File (OMPF).

2. The Board, consisting of [REDACTED] and [REDACTED], reviewed Petitioner's allegations of error and injustice on 6 January 2015, 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) furnished by the Headquarters Marine Corps (HQMC), a copy of which is provided as enclosure (3).

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 was arraigned and tried at a special court-martial for three specifications of violating a lawful order, making a false official statement, and two specifications of wrongful sexual contact of a prospective recruit applicant. He pleaded not guilty to all charges and specifications. After trial, he was found not guilty of all charges and specifications. Accordingly, the convening authority issued a SPCM Promulgating Order setting forth the results of Petitioner's trial, which was placed in his OMPF.

d. Enclosure (3) is an advisory opinion from the HQMC recommending favorable action. It states, in part, that although the Manual for Courts-Martial require that an order be promulgated setting forth the results of trial in every case regardless of the results, reference (e) of the advisory states that a "duplicate original" of the promulgating order is to be placed in the OMPF unless the court-martial proceedings resulted in acquittal of all charges. Additionally, Marine Corps regulation state that if the court-martial acquits the accused of all charges and specifications, the OMPF will not contain any indications that case was referred to a court-martial. Finally, the advisory opinion states the promulgating order was erroneously placed in the Petitioner's OMPF.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of enclosure (3), the Board concludes that Petitioner's request warrants full relief.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the Special Court-Martial (SPCM) Promulgating Order dated 7 October 2013, and all derogatory materials referencing 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.

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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.



T. J. REED
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.



ROBERT J. O'NEILL
Executive Director