



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

TRG
Docket No: 256-02
26 January 2003

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

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

Encl: (1) Case Summary
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an enlistment member of the Navy, filed an application with this Board requesting that his record be corrected by expunging all references to the nonjudicial punishment (NJP) of 3 May 2000.

2. The Board, consisting of Mr. Roberts, Ms. LeBlanc and Mr. Shy, reviewed Petitioner's allegations of error and injustice on 8 January 2003 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. Petitioner's application was filed in a timely manner.

c. Petitioner reenlisted in the Navy on 23 December 1997 with more than 11 years of active duty on prior enlistments. On 1 May 1998 he reported for duty at the Recruit Training Command (RTC), Great Lakes IL.

d. Petitioner received NJP on 3 May 2000 from the commanding officer (CO) RTC for wrongfully making repeated unwelcome verbal comments of a sexual nature about a seaman's wife, and maltreating a seaman by making him lick water off a table. The punishment imposed was a suspended forfeiture of pay and a reduction in rate from petty officer first class (AMS1; E-6) to petty officer second class (AMS2; E-5).

e. In a special performance evaluation for the period 16

November 1999 to 3 May 2000, Petitioner was assigned adverse marks of 1.0 in the categories of equal opportunity and military bearing/character, and "significant problems". The evaluation comments state, concerning the NJP, as follows:

.... Evaluation submitted due to Commanding Officer's NJP conducted 3 May 2000. (Petitioner) was found guilty of violating the Uniform Code of Military Justice Articles 92 and 93 and subsequently reduced in rate from AMS1 to AMS2.

.... (Petitioner's) lack of judgment resulted in a signification breech (sic) of Navy Core Values, and good order and discipline.

f. On 25 September 2000, the CO, RTC submitted a letter with the subject line stating "SET ASIDE OF NJP PUNIHSMENT" in Petitioner's case. Paragraph one of the letter states "I hereby set aside the reduction in rate imposed at nonjudicial punishment." The letter further stated that all rights, privileges, and property affected by virtue of the execution of this punishment shall be restored.

g. Petitioner reenlisted for five years on 15 May 2001 and continues to serve in an excellent manner.

h. In his application, Petitioner requests that the NJP be removed from his record because the CO set aside the punishment and ordered that all rights, privileges and property be restored to him. Attached to enclosure (1) is an advisory opinion from the Navy Personnel Command that essentially recommends that all entries concerning the reduction in rate be removed from the Court Memorandum (NAVPERS 1070/607), but that the NAVPERS 1070/607 remain in the record.

i. The Board is aware that if there is no punishment remaining, then there can be no NJP. However, in this case, that portion of the punishment showing that he received a suspended forfeiture of pay still remains even if the reduction in rate is expunged.

j. Regulations, as they apply to Petitioner's situation, allow for the submission of a special performance evaluation if it is necessary to document an NJP in a timely manner, withdraw a recommendation for advancement or to document a reduction in rate.

CONCLUSION:

Upon review and consideration of all the evidence of record the

Board concludes that Petitioner's request warrants favorable action. Although the subject line of the CO's letter states that the NJP punishment was being set aside, it is clear from the text of the letter that the CO was only referring to the reduction in rate and it does not mention the suspended forfeiture portion of the punishment. Since there is a remaining punishment, the Board agrees with the recommendation contained in the advisory opinion that the NJP documentation should remain in the record. However, the words "reduction to next inferior pay grade" should be deleted from the punishment awarded section of the NAVPERS 1070/607.

Concerning the performance evaluation, the Board believes that it should remain in Petitioner's record because it removes his recommendation for promotion and it was necessary to document the NJP in a timely manner. However, the Board concludes that the performance evaluation should be corrected to reflect that he was not reduced in rate at the NJP.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by deleting from the punishment awarded section of the NAVPERS 1070/607 dated 3 May 2000 the words "REDUCTION TO NEXT INFERIOR PAY GRADE".

b. That Petitioner's performance evaluation for the period 16 November 1999 to 3 May 2000 be changed by adding a period after the words "Articles 92 and 93" and deleting the words "and subsequently reduced in rate from AMS1 to AMS2."

c. 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.

d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with 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.

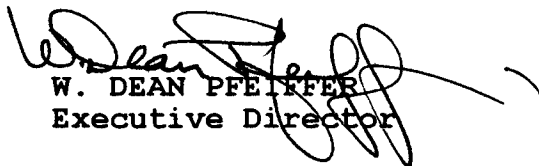
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
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 Regulations, 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