



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

TRG
Docket No: 183-02
9 May 2002

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) DD Form 149 w/attachments
(2) HQMC Memos JAM2A of 21 Mar 02 and MMPR-2 of 12 Apr 02
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a an enlisted member of the Marine Corps filed enclosure (1) with this Board requesting that his record be corrected to show that he was not reduced in grade at nonjudicial punishment (NJP) on 29 September 1998.

2. The Board, consisting of Mr. Cooper, Mr. Milner and Mr. Bishop, reviewed Petitioner's allegations of error and injustice on 30 April 2002 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. Although it appears that Petitioner's application was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner enlisted in the Marine Corps on 16 March 1998 for four years at age 19. On 29 September 1998, he received NJP from a Chief Warrant Officer 4 (CWO4) serving as the Officer-in-Charge (OIC), Marine Corps Detachment, Lackland Air Force Base, for wrongfully consuming alcohol while underage, in violation of Article 92 of the Uniform Code of Military Justice. He was awarded reduction to private (PVT E-1) and forfeitures of \$216

pay per month for one month. Since then he has been promoted to corporal, and apparently was released from active duty on 15 March 2002 which was after the date of his application.

d. At enclosure (2) are advisory opinions from the Military Law Branch, Judge Advocate Division, and the enlisted Promotion Section in Headquarters Marine Corps, both of which state that the NJP authority in Petitioner's case did not have the authority to reduce him in grade since this authority is restricted to "commanders, major and above," serving in specified billets. The opinion recommends that the record be corrected to show that Petitioner was not reduced on 29 September 1998. However, the opinion also notes that the NJP was otherwise proper and it should be retained in the record. The enlisted promotion branch notes that Petitioner may be eligible for remedial promotion consideration to lance corporal, corporal, and sergeant depending on his composite scores, and "This can be verified by, and additional remedial requests submitted through, his chain of command."

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. Since the CWO4 did not have authority to reduce him in grade, the Board agrees with the comments contained in the advisory opinions. Therefore, the record should be corrected wherever necessary to show that he was not reduced in grade on 29 September 1998.

RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that he was not reduced from PFC (E-2) to PVT (E-1) on 29 September 1998.
 - 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 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

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.



FOR W. DEAN PFEIFFER
Executive Director