



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

BJG
Docket No: 6759-98
19 March 1999

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

Subj: EX-CPI [REDACTED], USMC [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 15 Sep 98 w/attachments
(2) HQMC MIF memo dtd 15 Oct 98
(3) HQMC MMPR-2 memo dtd 21 Oct 98
(4) HQMC MMPR-2 memo dtd 8 Feb 99
(5) Memo for record dtd 15 Mar 99
(6) Memo for record dtd 17 Mar 99
(7) 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 naval record be corrected by unspecified correction of those of his proficiency and conduct (pro/con) marks affected by his nonjudicial punishment (NJP) of 5 December 1997. A copy of the printout from the Marine Corps Total Force System showing Petitioner's pro/con marks is in enclosure (2) at Tab A. Petitioner also requested promotion to sergeant, pay grade E-5.

2. The Board, consisting of Messrs. Hogue, Schultz, and Tew, reviewed Petitioner's allegations of error and injustice on 17 March 1999, and pursuant to its regulations, determined that the limited 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 5 December 1997, while Petitioner was serving on active duty as a corporal, pay grade E-4, he was awarded NJP for two periods of unauthorized absence. His punishment was reduction to lance corporal, pay grade E-3, forfeiture of \$300.00 pay per month for two months, 45 days' restriction, and 45 days' extra punishment duty (EPD). The forfeiture, restriction, and EPD were suspended for six months. Petitioner did not appeal.

d. On 4 December 1997, Petitioner received reduction in pay grade pro/con marks of "4.5" and "3.8", respectively, where "5.0" is the highest possible. On 31 January 1998, he was assigned semiannual pro/con marks of "4.0" and "3.8", respectively.

e. On 18 March 1998, Petitioner was diagnosed as suffering from idiopathic hypersomnia, a sleeping disorder. In light of this diagnosis, his NJP of 5 December 1997 was set aside on 2 September 1998.

f. In his letter dated 15 September 1998 (last document with Petitioner's application at enclosure (1)), Petitioner's civilian supervisor recommends approving his request for correction of his naval record to reflect his promotion to sergeant. The supervisor says he would have recommended Petitioner for promotion to sergeant during January 1998, had he not received the NJP.

g. In correspondence attached as enclosure (2), the HQMC Manpower Information Systems Field Support Branch, Manpower Management Information System Division (MIF) advised that Petitioner's case warrants limited corrective action, specifically, removal of his pro/con marks for 4 December 1997 and the conduct mark only for 31 January 1998. This advisory opinion states that the marks awarded on 4 December 1997 should have been set aside in view of the action to set aside the NJP, noting that the Manual for Courts-Martial, Part V, paragraph 6d, provides "Setting aside [an NJP] is an action whereby...any property, privileges, or rights affected by the portion of the punishment set aside are restored." Regarding the marks for 31 January 1998, MIF notes that in accordance with the Individual Records Administration Manual (IRAM), Marine Corps Order P1070.2H, proficiency marks below "3.0" must be documented by a service record page 11 ("Administrative Remarks") entry; and conduct marks below "4.0" must be documented by a page 11 entry "for any reason other than court-martial or NJP (where no reduction was awarded)." They find that the proficiency mark of "4.0" on 31 January 1998 is in accordance with the IRAM, but the conduct mark of "3.8" is not, since it is not supported by a page 11 entry.

h. In correspondence attached as enclosure (3), the HQMC Enlisted Promotions Section, Promotion Branch (MMPR-2) has advised that Petitioner's original date of rank as a corporal has been restored; that he has effectively requested remedial consideration for promotion to sergeant; and that requests of this nature must be submitted to MMPR-2 directly, not to this Board.

i. In correspondence attached as enclosure (4), MMPR-2 has advised that Petitioner's composite score failed to meet the cutting scores during any promotion quarter until his

release from active duty, therefore, the reduction pro/con marks of 4 December 1997 and the semiannual conduct mark of 31 January 1998 "did not change his promotion status."

j. The memorandum for the record at enclosure (5) reflects that MMPR-2 has advised that if Petitioner had been assigned "5.0" for both proficiency and conduct on 4 December 1997 and for conduct only on 31 January 1998, he still would not have had a high enough composite score to be promoted to sergeant.

k. The memorandum for the record at enclosure (6) shows that MMPR-2 has further advised that if Petitioner had been assigned "5.0" for both proficiency and conduct on both 4 December 1997 and 31 January 1998, he still would not have had a high enough composite score to be promoted to sergeant.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds an injustice warranting partial relief, specifically, removal of Petitioner's pro/con marks for both 4 December 1997 and 31 January 1998.

The Board agrees with the MIF opinion at enclosure (2) in finding that Petitioner's pro/con marks for 4 December 1997 should be removed in light of the action to set aside the NJP. They further concur that the conduct mark of 31 January 1998 violates the IRAM, since it is not supported by a page 11 entry. However, they find that both the proficiency and conduct marks for 31 January 1998 should be removed, since they conclude these marks, like the marks of 4 December 1997, were influenced by the now set aside NJP. In this regard, they particularly note that Petitioner's civilian supervisor says he would have recommended Petitioner for promotion to sergeant during January 1998, had he not received the NJP.

The Board finds that Petitioner's request for promotion to sergeant should be denied, since the memorandum at enclosure (6) from MMPR-2 shows that even if Petitioner had received "5.0" marks for both proficiency and conduct on both 4 December 1997 and 31 January 1998, he still would not have had a high enough composite score for promotion to sergeant.

In view of the above, the Board recommends the following limited corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing his pro/con marks for 4 December 1997 and 31 January 1998.

b. That there be inserted in his naval record a memorandum in place of each set of removed pro/con marks, containing appropriate identifying data; that each such memorandum state that the marks have been removed by order of the Secretary of the Navy in accordance with the provisions of federal law and may not be made available to selection boards and other reviewing authorities; and that such boards may not conjecture or draw any inference as to the nature of the marks.

c. That the magnetic tape maintained by Headquarters Marine Corps be corrected accordingly.

d. 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.

e. That any material directed to be removed from Petitioner's naval record be returned to this 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.

f. That Petitioner's request to be promoted to sergeant be denied.

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

Jonathan S. Ruskin
JONATHAN S. RUSKIN
Acting Recorder

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

W. Dean Pfeiffer
W. DEAN PFEIFFER
By direction

Reviewed and approved: MAY 21 1999

Karen S. Heath

KAREN S. HEATH
Principal Deputy Assistant Secretary of the Navy
(Manpower and Reserve Affairs)



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

6759-98

IN REPLY REFER TO:

MIF
1070
OCT 15 1998

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF CPL. [REDACTED]
[REDACTED]

1. We reviewed [REDACTED]'s application and supporting documents concerning proficiency and conduct marks that were awarded on 4 December 1997 that are being requested to be corrected.

2. MCO P1070.12H, Marine Corps Individual Records Administration Manual (IRAM) authorized commanders to make SRB entries as appropriate.

a. The computer-generated page designed for reporting of proficiency and conduct marks that are given to Marines in the grade of Corporal and below on:

(1) 31 July and 31 January, and on other occasions (reduction in grade) are authorized entries.

(2) A marking below 3.0 in proficiency must be documented on page 11 (Administrative Remarks) page.

(3) A marking below 4.0 in conduct must be documented on page 11 (Administrative Remarks) page for any reason other than court-martial or NJP (where no reduction was awarded).

b. An entry on page 11, Administrative Remarks, considered essential to document an event in a Marine's career for which no other means or method of recording exist.

3. Manual for Courts-Martial United States, 1984, Part V, paragraph 6d (Nonjudicial Punishment Procedures) states "Setting aside is an action whereby the punishment or any part or amount thereof, whether executed or unexecuted, is set aside and any property, privileges, or rights affected by the portion of the punishment set aside are restored."

4. The following comments concerning the proficiency and conduct marks being requested for correction are provided:

a. The Commanding Officer, Headquarters Battalion, HOMC, Henderson Hall, Arlington, VA Third Endorsement, on [redacted] ltr 1000 MMSR-5B of 7Jul98 - Subj: REQUEST TO SET ASIDE NON-JUDICIAL PUNISHMENT OF 5 DECEMBER 1997 IN THE CASE OF LANCE CORPORAL [redacted] USMC, approved the basic request that the NJP be set aside.

b. The marks awarded should have been set aside in accordance with the definition quoted in paragraph 3 above. As evidence by the attached MCTFS RECORD OF SERVICE the proficiency and conduct mark remains a part of Cpl [redacted] service record.

5. Upon review of [redacted]'s MCTFS Record of Service and page 11, Administrative Remarks, that accompanied the BCNR request it was noted:

a. The Proficiency Mark awarded on 19980131 was in accordance with the IRAM.

b. The Conduct Mark awarded on 19980131 is not supported by a page 11 (Administrative Remarks) entry; therefore, the entry is not in accordance with the IRAM as noted in paragraph 2a(3) above.

5. In view of the above, it is recommended that the following be expunged from [redacted]'s service record:

a. Proficiency and Conduct Marks awarded on 19971204.

b. Conduct Mark awarded on 19980131.

[redacted signature]

Head, Manpower Information Systems
Field Support Branch
Manpower Management Information
System Division
By direction of the
Commandant of the Marine Corps



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:
1400/3
MMPR-2
21 Oct 98

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: ADVISORY OPINION IN THE CASE OF [REDACTED]
[REDACTED] USMC

Ref: (a) (MMER) Route Sheet of 8 Oct 98
(b) CO HQBN HQMC, Henderson Hall ltr 1000 Adj of 2 Sep 98

1. Reference (a) is your request for an advisory opinion on Corporal [REDACTED] request for removal of the Proficiency/Conduct Marks associated with the nonjudicial punishment (NJP) awarded him on 5 December 1997 and the reinstatement of his original date of rank for promotion to corporal as 1 July 1995 with backpay. Reference (b) is the official letter to set aside Corporal [REDACTED] nonjudicial punishment.

2. Since Sergeant [REDACTED]s nonjudicial punishment was set aside, he is eligible for restoration of his original date of rank to corporal as 1 July 1995. The Marine Corps Total Force System currently reflects the correct date of rank for Corporal [REDACTED] promotion to corporal as 1 July 1995. He should have received all backpay and allowances due.

3. Corporal [REDACTED] also requested remedial consideration for promotion to the rank of sergeant. Requests of this nature must be submitted to the CMC (MMPR-2) directly not to the BCNR.

[REDACTED]

Assistant Head, Enlisted Promotions
Promotion Branch
By direction of
the Commandant of the Marine Corps



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

6759-98

IN REPLY REFER TO:
1400/3
MMPR-2
8 Feb 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: ADVISORY OPINION IN THE CASE OF CORPORAL [REDACTED]
[REDACTED] USMC

1. We ^{were} ~~are~~ asked to comment on whether Corporal [REDACTED] would have had the cutting score to be promoted to sergeant if he had not received the nonjudicial punishment that was imposed on him on 5 December 1997, and the associated proficiency/conduct (Pro/Con) marks awarded him subsequent to the NJP. Since then, the NJP has been set aside and the Pro/Con marks have been removed from his official military record.
2. After review of the information contained in the Marine Corps Total Force System (MCTFS) Corporal [REDACTED] composite score failed to meet the cutting scores during any promotion quarter until his release from active duty. Therefore, the reduction proficiency and conduct marks of 4 December 1997 and the semi-annual conduct mark for 31 January 1998 did not change his promotion status.

[REDACTED]

Head, Enlisted Promotions
Promotion Branch
By direction of
the Commandant of the Marine Corps

MEMORANDUM FOR THE RECORD

BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR)
PERFORMANCE SECTION
2 NAVY ANNEX, SUITE 2432
WASHINGTON, DC 20370-5100
TELEPHONE: DSN [REDACTED] COMM ([REDACTED])
FAX: DSN [REDACTED] COMM ([REDACTED])
E-MAIL: [REDACTED]@HQ.NAVY.MIL

DATE: 15MAR99
DOCKET NO: [REDACTED]
PET: EX-CPL [REDACTED], USMC [REDACTED]
PARTY CALLED: [REDACTED] S, USMC
TELEPHONE NO: ([REDACTED])
WHAT PARTY SAID: [REDACTED] INFORMED ME THAT EVEN IF YOU
CHANGED THE PRO/CON MARKS TO BE REMOVED TO "5.0/5.0", PET WOULD
STILL NOT HAVE THE COMPOSITE SCORE FOR PROM TO SGT.

[REDACTED]

MEMORANDUM FOR THE RECORD

BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR)
PERFORMANCE SECTION
2 NAVY ANNEX, SUITE 2432
WASHINGTON, DC [REDACTED]
TELEPHONE: DS [REDACTED] OR COMM [REDACTED]
FAX: DS [REDACTED]
E-MAIL: [REDACTED]

DATE: 17MAR99

DOCKET NO: [REDACTED]

PET: EX-CP [REDACTED], USMC

PARTY CALLED: [REDACTED] USMC [REDACTED]

TELEPHONE NO: [REDACTED]

WHAT PARTY SAID: [REDACTED] INFORMED ME THAT IF ALL FOUR OF THE
REMOVED PRO/CON MARKS WERE CHANGED TO "5.0", PET STILL WOULD NOT
HAVE THE COMPOSITE SCORE FOR PROM TO SGT.

[REDACTED]