



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

BJG
Docket No: 1685-01
20 June 2001

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

Subj: IT2 (AW) [REDACTED] ONK, USNFR [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 15 Nov 00 w/attachment
(2) OJAG memo dtd 1 Jun 01
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by showing that he was not reduced from pay grade E-6, IT1, to pay grade E-5, IT2, on 23 April 1999.

2. The Board, consisting of Messrs. Pfeiffer and Silberman and Ms. Madison, reviewed Petitioner's allegations of error and injustice on 20 June 2001, 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. In correspondence attached as enclosure (2), the Office of the Judge Advocate General, the office having cognizance over the subject matter addressed in Petitioner's application, has commented to the effect that his request has merit and warrants favorable action.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (2), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by showing that he was not reduced from IT1 to IT2 on 23 April 1999.

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 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.

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.

ROBERT D. ZSALMAN
Recorder

Jonathan S. Ruskin
JONATHAN S. RUSKIN
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.

Robert D. Zsalmán
For W. DEAN PFEIFFER
Executive Director



DEPARTMENT OF THE NAVY
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IN REPLY REFER TO

5800
Ser 20/0003
1 June 2001

From: Deputy Assistant Judge Advocate General (Criminal Law)
To: Chairman, Board for Correction of Naval Records

Subj: REQUEST FOR COMMENT AND RECOMMENDATIONS ICO IT2

[REDACTED]

Ref: (a) BCNR ltr BJJ Docket No. 1685-01 of 27 April 01

1. The reference requests comment and recommendation regarding the petition of [REDACTED] for correction of his naval record. IT2 [REDACTED] (Petitioner) requests that the punishment awarded him at a nonjudicial punishment (NJP) proceeding held on 23 April 1999 be set aside and all privileges and property affected by virtue of the execution of the reduction in rate one paygrade be restored.

2. BACKGROUND: Petitioner was reduced in rate one paygrade, from E-6 to E-5, by the Commanding Officer, Helicopter Combat Squadron FOUR, at a NJP proceeding pursuant to Article 15, UCMJ on 23 April 99. Because the Navy Personnel Command has removed all documentation from [REDACTED]'s service record regarding the NJP of 23 April 99 it is not known why [REDACTED] was punished. It is also not known what other punishment, if any, he received at the NJP besides the reduction in rate. On 4 Feb 00, the successor Commanding Officer, Helicopter Combat Squadron FOUR, set aside the 23 April 99 NJP. By correspondence dated 23 Feb 00 the Commander, Naval Military Personnel Command acknowledged that action had been taken to ensure that no documents relating to the NJP of 23 April 99 remain on file in [REDACTED] official service record.

3. DISCUSSION: Paragraph 6(d), Part V of the Manual For Courts-Martial states in its entirety:

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, rights affected by the portion of the punishment set aside are restored. The nonjudicial punishment authority who imposed punishment, the commander who imposes nonjudicial punishment, or a successor in command may set aside punishment. The power to set aside punishments and restore rights, privileges, and property affected by the executed portion of a punishment should ordinarily be exercised only when the authority considering the case believes that, under all circumstances of the case, the punishment has resulted in clear injustice. Also, the power to set aside an executed

punishment should ordinarily be exercised only within a reasonable time after the punishment has been executed. In this connection, 4 months is a reasonable time in the absence of unusual circumstances.

The Commanding Officer, Helicopter Combat Squadron FOUR, as the successor in command, had the authority to set aside the nonjudicial punishment imposed on IT2 [REDACTED] in his letter of 4 Feb 00 setting aside the NJP the Commanding Officer explains why in his opinion the NJP resulted in a clear injustice, and why the decision to set aside the punishment occurred more than 4 months after the punishment was imposed. The Chief of Naval Personnel apparently agreed with the Commanding Officer's decision, as by his letter of 23 Feb 00 he stated that action had been taken to ensure no documents relating to the NJP remained in [REDACTED] official record.

4. RECOMMENDATION: Based on the foregoing, I recommend that Petitioner's request that his reduction in rate awarded at the NJP on 4 Feb 99 be set aside and all property, privileges and rights affected by the reduction in rate be restored.

[REDACTED]