



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

SMC
Docket No: 05594-98
27 August 1999

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

Subj: LCPL [REDACTED], US [REDACTED]
REVIEW OF NAVAL RECORD

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

Encl: (1) DD Form 149 dtd 13Jul98 w/attachments
(2) HQMC 1070 MIF memo dtd 20Apr99
(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 his naval record be corrected by changing his "Conduct" marks of "3.9" and "3.6," dated 31 January and 13 March 1996 respectively, to levels in accordance with the Marine Corps Individual Records Administration Manual (IRAM). A copy of the MCTFS (Marine Corps Total Force System) Record of Service as of 4 February 1998, reflecting the contested marks, is at Tab A to enclosure (1).

2. The Board, consisting of Messrs. Lightle and Rothlein and Ms. Newman, reviewed Petitioner's allegations of error and injustice on 26 August 1999, 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. On 31 January 1996 Petitioner received a service record page 11 ("Administrative Remarks") counseling entry for missing a dental appointment which had been scheduled for 13 January 1996. A copy of the page 11 entry is at Tab B to enclosure (1). He alleges that both contested conduct marks were based on the same missed dental appointment for which he received the page 11 counseling entry. He further alleges that the dental appointment was made before he knew of a training seminar he was to attend on 13 and 14 January 1996. He asserts that the mark of "3.9" dated 31 January 1996 was not in compliance with the IRAM

because, he contends, to give a mark below "4.0," the Marine concerned must have received nonjudicial punishment or a series of page 11's, and must have been formally counseled. He states he was not counseled. Concerning the mark of "3.6" dated 13 March 1996, he objects that he had no counseling or any other page 11 entries to justify this mark, which was even lower than that assigned on 31 January 1996.

c. In further support of his request, Petitioner submitted three letters of support from fellow Marine Corps members, a master gunnery sergeant, a sergeant and a warrant officer. Their letters are at Tab C to enclosure (1). Both the master gunnery sergeant and the sergeant served with Petitioner during the period he received the contested marks. The master gunnery sergeant was the maintenance chief. Both the master gunnery sergeant and the sergeant state there was a personality conflict between Petitioner and the maintenance officer. The master gunnery sergeant says Petitioner did everything in his power to appease her, but to no avail. He states that Petitioner received a page 11 for missing a dental appointment, while "...other Marines during the same time frame for the same reason, did not." He further states that Petitioner missed the appointment because of a "confusing and mandatory training scenario." The master gunnery sergeant concludes that Petitioner's unauthorized absence resulted from the extreme stress and confusion of being overseas for the birth of his first child, just four days before his dental appointment, rather than criminal intent. Finally, the master gunnery sergeant expresses his professional opinion that survival during the pertinent period "...depended upon personalities, not professionalism." The sergeant asserts that the page 11 for missing one dental appointment did not justify either of the contested conduct marks. The warrant officer, for whom Petitioner worked after the period in question, states that Petitioner is a "truly outstanding Marine" and that he "is not a 3.6 or a 3.9 Marine."

d. In correspondence attached as enclosure (2), the Headquarters Marine Corps office having cognizance over the subject matter addressed in Petitioner's application has recommended partial relief, specifically, removal of the contested "Conduct" mark of "3.6" dated 13 March 1996 and its replacement by an entry of "NA." They based this recommendation on their conclusion that the information available in Petitioner's service record book does not substantiate this mark, noting that the assignment of "Proficiency" and "Conduct" marks should be limited to the proficiency and conduct of the Marine during the reporting period concerned. As further support for their recommendation to remove the mark of 13 March 1996, they cited the statement of the master gunnery sergeant. Regarding the contested mark of "3.9" dated 31 January 1996, they stated that full discretion is left to commanders in assigning "Conduct" marks per guidance set forth in the IRAM.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board finds the existence of an injustice warranting removal of both contested "Conduct" marks and their replacement by an entry of "NA."

The Board fully concurs with the pertinent portion of enclosure (2) concerning the mark of 13 March 1996.

Notwithstanding the recommendation of enclosure (2) against relief regarding the mark of 31 January 1996, they find this mark should be removed and replaced as well. They recognize that commanders have discretion in assigning "Conduct" marks, and that Petitioner's page 11 entry serves to explain why the "Conduct" mark of 31 January 1996 was assigned. However, the statements of the master gunnery sergeant and sergeant persuade them that this mark was unduly harsh.

In view of the above, the Board recommends the following corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing his "Conduct" marks of "3.9" and "3.6", dated 31 January and 13 March 1996, respectively, and replacing each with the entry "NA."

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. 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

Reviewed and approved:

SEP 17 1999

C-L. Tompkins

CHARLES L. TOMPKINS
Deputy Assistant Secretary of the Navy
for Personnel Programs

5594-99



DEPARTMENT OF THE NAVY
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IN REPLY REFER TO:

1070
MIF
20 APR 99

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF [REDACTED]

1. We reviewed [REDACTED] application and supporting documents concerning the request for changing conduct marks noted on Record of Service (ROS) in his service record.

2. MCO P1070.12, Marine Corps Individual Records Administrative Manual (IRAM) authorizes commanders to make service record book (SRB) entries on the Record of Service to provide commanders with a visual reference of previously reported conduct and duty proficiency markings and the averages of those markings for the time in grade, enlistment, and service.

3. The conduct marks of 3.6 dated 960313 and 3.9 dated 960131, being requested for change meet the standard for assigning conduct marks in that full discretion is left to commanders in assigning marks per the guidance set forth in MCO P1070.12.

4. The assignment of pro/con marks should be limited to the proficiency and conduct of the Marine DURING THAT REPORTING PERIOD. We feel that the information available in the service record book does not substantiate the conduct mark of 3.6 dated 960313. Given this and the statement supplied by [REDACTED] we recommend the conduct mark of 3.6 dated 960313 be removed from the Marine's MCTFS Record, and be replaced with a conduct mark of NA.

[REDACTED]

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