



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

CRS
Docket No: 806-00
30 August 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 30 August 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Assistant Staff Judge Advocate for Military Law, Headquarters Marine Corps dated 13 April 2000, a copy of which is enclosed. The Board also considered your rebuttal statement of 2 June 2000.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



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

IN REPLY REFER TO:

1070

JAM3

13 APR 2000

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

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
IN THE CASE OF PRIVATE, [REDACTED]
3381 U.S. MARINE CORPS

1. We are asked to provide an opinion on Petitioner's request for correction of his grade at discharge from private to private first class (PFC).

2. We recommend that the requested relief be denied. Our analysis follows.

3. Background

a. On 9 April 1987, Petitioner was punished at nonjudicial punishment (NJP) for insubordinate conduct toward a noncommissioned officer, in violation of Article 91, Uniform Code of Military Justice (UCMJ). He was awarded reduction to paygrade E-1 and 15 days restriction. The reduction was suspended for a period of 3 months, at which time unless sooner vacated, it would be remitted without further action. On 13 April 1987, the suspension was vacated for Petitioner's failure to obey a lawful order, in violation of Article 92, UCMJ. Petitioner was reduced to paygrade E-1.

b. On 29 June 1987, Petitioner was convicted by a special court-martial of failure to obey a lawful order, willfully disobeying a superior commissioned officer, resisting apprehension, and escape from custody in violation of Articles 90, 92 and 95 UCMJ. He was awarded confinement for 4 months, forfeiture of \$438.00 pay per month for 6 months, and a bad conduct discharge. On 12 August 1987, the convening authority (CA) approved the findings and sentence. The CA, however, took his action without the benefit of the advice of the Staff Judge Advocate (SJA) as required by Rule for Court-Martial (R.C.M.) 1106; in addition, the record of trial was not forwarded for appellate review, as required by law. On 4 September 1987, Petitioner was ordered to involuntary appellate leave.

c. On 15 July 1989, the case was finally reviewed by the SJA, Naval Base, Philadelphia, Pennsylvania. He concluded that there had been an excessive and unwarranted post-trial delay in

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
IN THE CASE OF P [REDACTED] /
3381 U.S. MARINE CORPS

forwarding the case for appellate review, and he recommended that that the original CA's action be rescinded, and the charges be set aside and dismissed. On 17 August 1989, the CA disapproved the sentence, and dismissed the charges and specifications. Petitioner was then administratively separated from the Marine Corps.

d. Petitioner contends that since one of the charges tried at his court-martial also provided the basis for the earlier vacation of the suspension of NJP, he should be restored to the paygrade of E-2. This argument is without merit. Our analysis follows.

4. Analysis. Prior imposition of NJP is not a bar to subsequent trial by court-martial for the same offense. Moreover, a vacation proceeding is not a separate disciplinary proceeding from the NJP that imposed the punishment. The NJP authority's vacation of the suspension of punishment, therefore, in no way hindered his authority to refer the charges, based on the same misconduct, to a court-martial. Finally, any prejudice to Petitioner, resulting from the CA's failure to consider his SJA's advice, before acting on his case, was cured by the subsequent dismissal of the charges and specifications.

5. Conclusion. Accordingly, for the reasons noted, we recommend that the requested relief be denied.

[REDACTED]
Head, Military Law Branch
Judge Advocate Division