



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

BJG
Docket No: 947-02
13 June 2002

[REDACTED] ISMC
[REDACTED]
[REDACTED]

Dear Lt [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the 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 13 June 2002. 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 Headquarters Marine Corps, dated 20 March 2002, a copy of which is attached.

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
JAM8

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL
RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
IN THE CASE OF FIRST LIEUTENANT [REDACTED]
250 [REDACTED] SMC

1. We are asked to provide an opinion on Petitioner's request to remove from his official military personnel file (OMPF) all administrative separation documents prepared while he was a enlisted member of the U.S. Marine Corps Reserve.
2. We recommend that Petitioner's request for relief be denied. Our analysis follows.
3. Background

a. In 1997, Petitioner was a Private First Class in the U.S. Marine Corps Reserve attached to Company "D" (REIN), 8th Tank Battalion, 4th Marine Division. In June and July 1997, Petitioner missed scheduled drill periods. During this time period, command attempts to contact Petitioner at his last known phone number and address were unsuccessful. As a result, Petitioner's command processed him for administrative separation for unsatisfactory participation in the Ready Reserve. Petitioner was notified of the pending discharge proceedings using certified mail; however, Petitioner did not acknowledge receipt, nor did he respond to the notification letter. Subsequently, the Commander, U.S. Marine Forces Reserve approved Petitioner's administrative separation and characterized his service as Under Other Than Honorable Conditions.¹

b. Petitioner claims that the administrative separation process, initiated in his absence, was the result of a miscommunication between the Inspector-Instructor (I&I) staff and his Reserve staff. Petitioner claims that when his home was destroyed by fire in 1997, his Gunnery Sergeant told him to take time to find a new place to live and get new uniforms. According to Petitioner, the I&I First Sergeant did not agree and began the administrative separation process.

4. Analysis. No legal error occurred in the administrative separation process that created subject documents. Our analysis follows:

a. Both the Commanding Officer and I&I recommended Petitioner be administratively separated after Petitioner missed scheduled drill

¹Prior to Petitioner's discharge taking effect, he was selected for the Officer Candidate Course Program.

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
IN THE CASE OF FIRST LIEUTENANT [REDACTED]

periods. These recommendations are supported by several enclosures to the separation package including: Unsatisfactory Participation Worksheet (enclosure (2)); Affidavit of Service of attempts to serve on Petitioner the Notification of Discharge Proceedings, Acknowledgement of Rights and the Board of Corrections for Naval Records/Naval Discharge Review Board information (enclosure (3)); and PS Form 3811 certified mail receipt (enclosure (4)). Enclosures (2) and (3) document three attempts by the command to contact Petitioner on his missed drill periods.

b. Petitioner offers no evidence in support of his claim. Contrary to Petitioner's claim of miscommunication between the Reserve staff and I&I staff, both the Commanding Officer and I&I signed the recommendation to administratively separate Petitioner.²

c. Even if Petitioner's claim that he had "permission" to miss a drill period to "take some time to find a new place to live and obtain new uniforms" was true, the recommendation for administrative separation is based on more than one missed drill period. Additionally, in their recommendation to administratively separate Petitioner, the Commanding Officer and I&I refer to Petitioner's "thoroughly repulsive drill participation (i.e., 13 drills)."

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

[REDACTED]
Head, Military Law Branch
Judge Advocate Division

²Petitioner provides a retainer agreement for legal representation for an accident claim that occurred almost 1 year before the administrative separation process began. Additionally, documents listed in support of Petitioner's application (i.e., EMS bills) are not included.