



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

BJG
Docket No: 4571-02
12 September 2002

1STLT [REDACTED] SMCR
[REDACTED]
[REDACTED]

Dear Lieutenant [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 12 September 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 22 July 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. They were unable to find you were not given the benefit of the presumption of innocence before the investigation of your case. They were likewise unable to accept your unsupported assertion that the enlisted female student you were allegedly unduly familiar with tried to impress her boyfriend by falsely telling him you were in competition for her affection. In view of the above, 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
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

4571-02

IN REPLY REFER TO:

1070
MIFD
22 JUL 2002

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF FIRST LIEUTENANT [REDACTED]
[REDACTED] USMCR

1. First Lieutenant [REDACTED] application with supporting documents has been reviewed concerning his request for removal of an Administrative Remarks (1070) NAVMC 118(11) page 11 entry dated 010907 from his service records.
2. MCO P1070.12K, Marine Corps Individual Records Administration Manual (IRAM), authorizes commanders to make entries on page 11 that are essential to document an event in a Marine's career for which no other means or method of recording exists. Authorized entries under this rule must meet two tests: (1) the information contained in the entry is of permanent value to the Marine's career; and, (2) the information is not, or cannot be, documented anywhere else in the Officer's Qualification Record (OQR) or the Marine's automated record.
3. MCO 1610.12, the U.S. Marine Corps Counseling Program states that:
 - a. "Counseling is that part of leadership which ensures, by mutual understanding, that the efforts of leaders and their Marines are continuously directed toward increased unit readiness and effective individual performance.
 - b. Increase individual performance and productivity through counseling and thereby increases unit readiness and effectiveness.
 - c. Counseling enhances the leader's ability to improve the junior's performance."
4. One of the many leadership tools that a commander has at their disposal is counseling and rehabilitation for their Marines. Marine Corps policy is that reasonable efforts at rehabilitation should be made prior to initiation of separation proceedings and that the commander is authorized to document those efforts by a page 11 counseling entry per the IRAM. The Marine Corps Separation Manual (MCO P1900.16), paragraph 6105, sets forth policy pertaining to counseling and rehabilitation.

Subj: BCNR APPLICATION IN THE CASE OF FIRST LIEUTENANT [REDACTED]
[REDACTED] USMCR

5. United States Navy Regulations, Article 1165 contains the guidance concerning fraternization and sexual harassment.

6. The Manual of the Judge Advocate General (JAGMAN), SECNAVINST 5800.7, paragraph 0204, states that the purpose of a preliminary inquiry is to serve as an analytical tool for a commander to determine whether an additional investigation is warranted and, if so, how it is to be conducted. It is the foundation for any subsequent action that the commander may exercise and is not intended to develop or analyze facts.

7. The Marine Corps Manual contains the instruction and guidance of all persons in the Department of the Navy in matters concerning the Marine Corps.

8. The following comments/opinions concerning the page 11 entry dated 010907 are provided:

a. The counseling entry does not meet the elements of a proper page 11 counseling in that it fails to list recommendations for corrective action and where assistance can be found. This entry does state that First Lieutenant [REDACTED] was provided the opportunity to make a rebuttal statement and afforded him an opportunity to annotate whether or not he chose to make such a statement, and if made, that a copy of the statement would be filed in his OQR.

b. First Lieutenant [REDACTED] acknowledged the counseling entry by his signature, and indicated his desire "to" make a statement in rebuttal that is included in his application.

c. First Lieutenant [REDACTED] claims that this page 11 entry is in error or unjust due to his being "unjustly accused of the offense listed." is not supported by documented evidence. The Preliminary Inquiry from Captain [REDACTED] concludes in the summary of findings that there was an appearance of some form of inappropriate behavior or relationship may have taken place and recommended a command investigation. This preliminary inquiry is not the foundation to find that a service member has committed an offense under the Uniform Code of Military Justice (UCMJ) per the JAGMAN. The deficiency that the counseling entry does list carries severe consequences if substantiated by an Article 32 investigation per JAGMAN, however, the commander elected to resolve this issue by the preparation of a page 11 counseling entry, a nonpunitive administrative action.

Subj: BCNR APPLICATION IN THE CASE OF FIRST LIEUTENANT [REDACTED] USMCR

d. The fact that the page 11 entry does not contain the two elements, "recommendations for corrective action and where assistance is available", the validity of the page 11 could be mitigated. However, paragraph 1100.2 of the Marine Corps Manual gives First Lieutenant [REDACTED] the special trust and confidence, which is expressly reposed in officers by their commission, a distinguishing privilege of the officer corps. Accordingly, it is the policy of the Marine Corps that this privilege be tangible and real; it is the corresponding obligation of the officer corps that it be wholly deserved. It was First Lieutenant [REDACTED] responsibility and expectation by his seniors to exert proper influence upon his comrades by setting examples of obedience, courage, zeal, sobriety, neatness, and attention to duty. Therefore, First Lieutenant [REDACTED] would be qualified to provide the leadership in knowing what the recommended course of corrective action and where assistance is available.

e. Paragraph 1100.2d(1) of the Marine Corps Manual states that commanders will impress upon all subordinate officers the fact that the presumption of integrity, good manners, sound judgment, and discretion, is jeopardized by the slightest transgression on the part of any member of the officer corps. Additionally, First Lieutenant [REDACTED] commander was required to deal promptly with any offense, however minor, with sufficient severity to impress on the officer at fault. It appears that First Lieutenant [REDACTED] abused his position by the appearance that he was pursuing an unduly familiar relationship with an enlisted Marine student.

f. First Lieutenant [REDACTED] contests and explains his page 11 entry.

g. It appears that First Lieutenant [REDACTED] commander utilized all available leadership tools as stated in paragraph 3 and 4 above, and followed proper procedures authorized by the IRAM in documenting those actions by the preparation of a page 11 counseling entry.

Subj: BCNR APPLICATION IN THE CASE OF FIRST LIEUTENANT [REDACTED]
[REDACTED] JSMCR

9. In view of the above, it is recommended that:

a. The Board for Correction of Naval Records disapprove First Lieutenant [REDACTED] request for removal of the Administrative Remarks (1070) NAVMC 118(11) page 11 entry dated 010907 from his service records.

b. If the Board for Correction of Naval Records finds that First Lieutenant [REDACTED] records are in error or an injustice was committed, approve his request to remove the Administrative Remarks (1070) NAVMC 118(11) page 11 entry dated 010907 from his service records.

10. Point of contact [REDACTED]

[REDACTED]

Head, Manpower Information
Systems Field Support Branch,
Manpower Management Information
Systems Division