



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

CRS
Docket No: 6290-02
7 May 2003

[REDACTED]

[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 7 May 2003. 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 14 February 2003, a copy of which is attached. The Board also considered your rebuttal statement of 19 March 2003.

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. The Board also considered your request for the Navy Achievement Medal but could not find any evidence that such an award was recommended or approved. Additionally, the Board does not reimburse individuals for the loss of military equipment. 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
JAM4
FEB 14 2003

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL RECORDS

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

1. We are asked to provide an opinion on Petitioner's request for reinstatement to the grade of sergeant, paygrade E-5. Petitioner was reduced in grade as a result of the non-judicial punishment (NJP) he received on 1 September 2001.

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

3. Background

a. On 30 August 2001, the Commanding Officer, Battalion Landing Team 2/1, 11th Marine Expeditionary Unit, Camp Pendleton, California, imposed NJP on Petitioner for larceny of two switchblades from a Navy petty officer, in violation of Article 121 of the Uniform Code of Military Justice. Petitioner was reduced to the grade of corporal (paygrade E-4), restricted to specified limits for 45 days, and awarded forfeiture of \$750.00 pay per month for 2 months.

b. Petitioner appealed the NJP in his letter of 2 September 2001. In the letter, Petitioner took "full responsibility" and admitted he was wrong to take the switchblades from the petty officer. As a result of Petitioner's appeal, the Commanding Officer, Battalion Landing Team 2/1, suspended the forfeitures.

c. On 4 December 2001, the Commanding Officer, Battalion Landing Team 2/1, vacated the suspension and ordered the imposed forfeitures executed. This action was taken following additional minor offenses against the UCMJ committed by Petitioner.

4. Analysis. Petitioner claims that his NJP was unjust because he did not commit misconduct and was not given adequate opportunity to explain his version of events. Petitioner's claims are without merit.

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
IN THE CASE OF FORMER CORPORAL [REDACTED]
[REDACTED] /0321 USMC

a. Petitioner has provided no evidence that his NJP was unjust or that he was otherwise treated unfairly. The record does not reveal any legal error or deprivation of administrative rights associated with NJP - and no specific error is alleged.

b. Petitioner now claims that he did not commit misconduct because he did not intend to steal the switchblades. Petitioner's attempt to re-litigate the facts surrounding his offense is both untimely and contrary to his earlier express admissions. Petitioner offers a self-serving explanation of his subjective intent that does not correspond to his actions at the time of his offense, or those during the course of his punishment. To take Petitioner at his word now, without any supporting evidence, is to surrender this process to the irrational.

c. Petitioner provides no evidence to support his vague claim that he was denied adequate opportunity to explain his version of events. The record demonstrates the falsity of this claim in any event. Petitioner appealed his NJP in writing, and certainly could have authored an exposition of his innocence. Instead, Petitioner admitted wrongdoing.

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

[REDACTED]
Assistant Head,
Military Law Branch
Judge Advocate Division