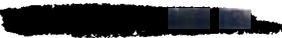




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 9726-02
23 April 2003



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 23 April 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 11 March 2003, 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. The Board did not consider removing your conviction by a special court-martial from the record, since the Board has no such authority. However, your sentence was reviewed as a matter of clemency, but the Board found that it was appropriate and should not be changed. 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

Copy to:
The Honorable Chris John



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

IN REPLY REFER TO:
1070
JAM4
MAR 11 2003

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL
RECORDS

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

1. We are asked to provide an opinion on Petitioner's request to remove from his Service Record Book (SRB) and Official Military Personnel File (OMPF) all entries relating to his 19 October 1993 special courts-martial conviction for carnal knowledge, in violation of Article 120, Uniform Code of Military Justice (UCMJ).

2. We recommend that Petitioner's request for relief be denied. Our analysis follows.

3. Background

a. On 19 October 1993, Petitioner was convicted, in accordance with his guilty plea, by special court-martial of carnal knowledge, in violation of Article 120, UCMJ. The military judge adjudged the following sentence: 180 days confinement, forfeiture of \$543.00 pay per month for 6 months, reduction to private (paygrade E-1), and a bad conduct discharge.

b. On 20 March 1994, the Commanding Officer, 3d Battalion, 1st Marines, approved the findings and ordered the sentence executed, except that he suspended that portion of the sentence adjudging a bad conduct discharge.

c. On 23 April 1999, Petitioner was released from active duty upon completion of required active service. His service was characterized as Honorable.

4. Analysis. Petitioner requests removal of his special court-martial conviction in order to facilitate his civilian employment. Petitioner claims that the records should be removed because he was allowed to continue to serve on active duty following his conviction, was Honorably discharged, and has since enlisted in the U.S. Army, Reserve. Petitioner's claims are without merit.

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

a. Petitioner does not claim factual innocence or any legal error in the findings or sentence of his special court-martial. Petitioner's appeal for equitable relief without demonstrated error or injustice is not cognizable by the Board.

b. Paragraph 4008, Marine Corps Individual Records Administration Manual (IRAM), requires records of conviction by court-martial to be prepared and documented on page 13 of the SRB. The suspension of the bad-conduct discharge and Petitioner's subsequent Honorable discharge obviously do not change the historical fact of Petitioner's conviction.

c. Adverse consequences result from criminal convictions by design.

5. Conclusion. Accordingly, we recommend that Petitioner's requested relief be denied.