



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

Docket No: 9279-07
20 November 2008

[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 19 November 2008. 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 26 November 2007, 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
3000 MARINE CORPS PENTAGON
WASHINGTON, DC 20350-3000

IN REPLY REFER TO:
1070
JAM7
NOV 26 2007

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: APPLICATION FOR CORRECTION IN THE CASE OF CORPORAL
[REDACTED]

1. You requested an advisory opinion on [REDACTED] (hereinafter "Applicant") application, docket #09279-07, to request the rank of sergeant be restore.

2. Opinion. We recommend the Board deny relief. Applicant fails to provide substantial evidence that a material error or injustice occurred with his NJP.

3. Background

a. On 10 February 2007, the Commanding Officer, 2d Battalion, Recruit Training Regiment, Marine Corps Recruit Depot, San Diego, CA, imposed NJP upon Applicant for violating an order or regulation, in violation of Article 92, Uniform Code of Military Justice (UCMJ). Applicant was reduced to the rank of corporal (paygrade E-4), received forfeiture of half pay per month for 2 months, restriction to the limits of places (mess, duty, route to and from work, and worship) and 45 days extra duties. Applicant appealed his NJP, and denied on 8 March 2007.

b. Applicant now requests that he be restored to his previous rank, because he was not properly notified of the maximum punishment when he received the NJP.

4. Analysis

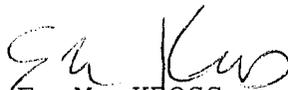
a. No legal error occurred in the imposition of NJP. The Applicant has provided no credible evidence that his NJP was unjust. Based on the documentary evidence, Applicant was afforded his full procedural rights, including the opportunity to consult with an attorney. Applicant was informed of his right to refuse NJP and chose to accept NJP. These procedural rights are designed to ensure both fairness and finality in the context of an administrative process.

Subj: APPLICATION FOR CORRECTION IN THE CASE OF [REDACTED]
[REDACTED]

b. In order to justify correction of a military or naval record, Applicant bears the burden to show to the satisfaction of the Board, or it must otherwise satisfactorily appear, that the alleged entry or omission in the record was in error or unjust. Applicant claims that because he was not properly notified of his maximum punishment when he received the NJP. We find that no error or injustice occurred and the Applicant's claim has no merit.

5. Conclusion. Accordingly, we recommend that Applicant's request for relief should be denied.

6. This advisory opinion contains privileged attorney-client work product and is provided solely to BCNR. Please contact the Military Law Branch at (703) 614-4250, if you seek to release any of this information.



E. M. KROSS

Deputy, Military Law Branch
Judge Advocate Division
By direction of the
Commandant of the Marine Corps