



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

CRS
Docket No: 2-08
25 August 2008

[REDACTED]

[REDACTED]

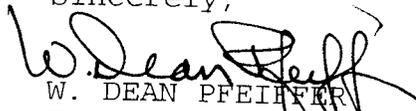
This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 20 August 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 5 February 2008, 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

JAM3

FEB 05 2008

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

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

Ref: (a) SECNAVINST 5420.193

1. You requested an advisory opinion on [REDACTED] (hereinafter "Applicant") request to remove his nonjudicial punishment (NJP) from his Official Military Personnel File (OMPF).

2. Opinion. We recommend that Applicant's relief be denied. Our analysis follows.

3. Background

a. On 10 April 2001, Applicant received NJP for violation of Article 86, unauthorized absence, (two Specifications), and Article 91, insubordinate conduct toward a warrant or non-commissioned officer, Uniform Code of Military Justice (UCMJ). Applicant was sentenced to forfeiture of \$563.00 pay per month for 2 months, reduction to pay grade E-2, and restriction for 60 days. The forfeiture of \$563.00 pay per month for 2 months and the reduction to pay grade E-2 were suspended for 6 months.

b. Applicant requests that his NJP be removed based on the assertion that Applicant was made to move on base to carry out his restriction and his housing allowance was improperly withheld.

4. Analysis

a. Initially we note that the board should reject the application because it is untimely. In accordance with the reference, an application for correction of a record must be filed within three years after discovery of the alleged error or injustice unless the Board excuses the untimely filing in the interest of justice. The Applicant filed this application to

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IN THE CASE OF [REDACTED]
USMC

BCNR on 14 December 2007, over 6 years after his NJP of 10 April 2001. Applicant offers no justification for this untimely application for relief and he has failed to make any showing that the interests of justice warrant its untimely consideration.

b. No legal error occurred in the imposition of the NJP. Applicant has provided no credible evidence that his NJP was unjust or disproportionate. Based on the documentary evidence, Applicant was afforded his full procedural rights, including the opportunity to consult with an attorney as noted by his initials on NAVMC form 10132. Applicant was informed of his right to refuse NJP and to demand trial by court-martial, but instead voluntarily accepted NJP. These procedural rights are designed to ensure both fairness and finality in the context of an administrative process.

c. In order to justify correction of a military or naval record, the 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. The Applicant has provided no evidence whatsoever in support of his application, other than the bare assertion that the NJP was unjust.

d. Applicant asserts that his entitlement to BAH equates to his NJP being somehow invalid. The fact that Applicant's housing allowance was improperly withheld, has no bearing on the validity of the underlying NJP. Applicant's claim has no merit.

5. Conclusion. No corrective action is warranted in this case because Applicant fails to demonstrate by substantial evidence that his NJP was in error or an injustice.

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 this memorandum.



E. M. KROSS

Deputy, Military Law Branch
Judge Advocate Division

By direction of the
Commandant of the Marine Corps