



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

CRS
Docket No: 3200-01
21 August 2001

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, 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 21 August 2001. 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 2 July 2001, 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
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:

1070
JAM4
02 JUL 2001

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 for the removal from his service record book (SRB) and official military personnel file (OMPF) of all entries related to the nonjudicial punishment (NJP) he received on 30 June 2000. Petitioner also requests the restoration of all property, privileges, and rights affected by that NJP.
2. We recommend that Petitioner's request for relief be denied. Our analysis follows.
3. Background
 - a. On 17 June 2000, Petitioner was arrested for breach of peace in Myrtle Beach, South Carolina. On the same day, Petitioner paid a \$199.00 fine and was released.
 - b. On 30 June 2000, Petitioner received NJP for breach of peace, and drunk and disorderly conduct, in violation of Articles 116 and 134, Uniform Code of Military Justice (UCMJ), respectively. Petitioner accepted NJP and pleaded guilty. Petitioner, then a corporal, pay grade E-4, was awarded reduction in grade to E-3 and forfeiture of \$667.00 pay per month for 1 month. Petitioner did not appeal.
4. Analysis.
 - a. Petitioner fails to allege any error or injustice on his DD Form 149. Petitioner, however, attached an unsigned letter from his wife to his commanding officer and a signed letter from his wife to the Commandant of the Marine Corps in which Petitioner's wife asserts that Petitioner's NJP was unjust. We address these allegations here on the theory that by attaching these letters Petitioner intended to make them his own. Specifically, we address the claims that Petitioner's NJP was unjust because: (1) other Marines did not receive NJP for

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

civilian arrests; (2) the charge of drunk and disorderly conduct was fabricated; (3) Petitioner's violations of the UCMJ occurred off-base on his personal time; and, (4) Petitioner had already paid a civilian fine for the same misconduct. None of these claims have merit.

b. Petitioner's claim that his NJP was unjust because other Marines did not receive NJP as the result of civilian arrests is without merit. The misconduct of other Marines does not absolve Petitioner from his own misconduct. Moreover, disparate treatment only provides grounds for relief if the following factors exist: the cases are factually indistinguishable; the treatment of co-accused is widely dissimilar; and the dissimilarity resulted from improper motive on the part of the authority that jointly disposed of the offenses. None of these factors are present in this case.

c. Petitioner's claim that his NJP was unjust because the charge of drunk and disorderly conduct was fabricated is without merit. The elements of drunk and disorderly conduct under Article 134 of the UCMJ are: (1) that the accused was drunk, disorderly, or drunk and disorderly; and, (2) that the conduct of the accused was prejudicial to good order and discipline or service discrediting. The statements of the other Marines present and the civilian police citation sufficiently establish both of these elements. The decision of the Myrtle Beach Police Department to cite Petitioner with breach of peace does not limit the Marine Corps' disposition of the offense. Additionally, Petitioner accepted the NJP and pleaded guilty to both offenses alleged.

d. Petitioner's claim that his NJP was unjust because his misconduct occurred off base on his personal time is specious. It is immaterial that Petitioner's misconduct occurred off base while on liberty because those facts do not limit the commander's ability to impose NJP. Article 2 of the UCMJ establishes jurisdiction over members of the regular components of the armed forces. Jurisdiction under Article 2 is not limited by a Marine's location or duty status.

e. Petitioner's claim that his NJP was unjust because he had already paid a fine for the civilian offense is without merit. Although NJP may not be imposed for offenses tried by a

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

State or foreign court unless authorized by the secretary concerned," Manual for Courts Martial, United States, Part V, par. 1f(5), Petitioner was never actually "tried" in court. JAGINST 5800.7C specifically prohibits NJP in instances where a case was previously tried in civil courts.

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

[REDACTED]
Head, Military Law Branch
Judge Advocate Division