



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

CRS
Docket No: 3297-01
6 September 2001



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 6 September 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 16 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
16 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 26 August 1980. Petitioner also requests restoration of all property, privileges, and rights affected by his NJP. In addition, Petitioner requests that BCNR upgrade the characterization of his Under Other Than Honorable Conditions discharge.

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

3. Background

a. On 27 April 1980, Petitioner received NJP (his first) for disrespect in violation of Article 91 of the UCMJ. Petitioner was awarded a forfeiture of \$100.00 pay per month for 1 month, suspended for 3 months. The suspended forfeiture was subsequently vacated on 16 June 1980.

b. On 16 June 1980, Petitioner also received NJP for unauthorized absence in violation of Article 86 of the UCMJ. Petitioner was awarded a forfeiture of \$25.00 pay per month for 1 month.

c. On 20 July 1980, Petitioner received NJP (his third) for wrongfully communicating a threat in violation of Article 134 of the UCMJ. Petitioner was awarded a forfeiture of \$100.00 pay per month for 1 month and 7 days correctional custody.

d. On 15 June 1981, Petitioner received NJP (his fourth) for unauthorized absence in violation of Article 86 of the UCMJ. Petitioner was awarded a forfeiture of \$100.00 pay per month for 1 month, 10 days restriction, and 10 days extra duty. All punishment was suspended for 3 months.

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

e. On 27 June 1981, Petitioner received NJP (his fifth) for disrespect in violation of Article 91 of the UCMJ. Petitioner was awarded a forfeiture of \$100.00 pay per month for 1 month, 14 days restriction, and 14 days extra duty. Forfeiture was suspended for 4 months.

f. On 26 August 1981, Petitioner received NJP (his sixth) for unauthorized absence in violation of Article 86 of the UCMJ. Petitioner, then a lance corporal, pay grade E-3, was awarded a reduction to pay grade E-2 and a forfeiture of \$75.00 pay per month for 1 month.

g. On 2 September 1981, Petitioner was notified that as a result of his pattern of misconduct he was being processed for administrative separation with an Under Other Than Honorable Conditions characterization of service.

h. On 19 September 1981, Petitioner received NJP (his seventh) for drunk and disorderly conduct in violation of Article 134 of the UCMJ. Petitioner was awarded 14 days restriction.

i. On 20 September 1981, Petitioner received NJP (his eighth) for breaking restriction in violation of Article 134 of the UCMJ. Petitioner was awarded a forfeiture of \$130.00 pay per month for 1 month and 3 days confinement on bread and water.

j. On 24 September 1981, Petitioner received NJP (his ninth) for disrespect in violation of Article 89 of the UCMJ. Petitioner was awarded a forfeiture of \$130.00 pay per month for 1 month and 3 days confinement on bread and water.

k. On 6 January 1982, Petitioner was again notified that as a result of his pattern of misconduct he was being processed for administrative separation with an Under Other Than Honorable characterization of service. Petitioner was advised of his right to consult with an attorney and his right to an administrative separation board. Petitioner elected to waive his rights and was discharged with an Under Other Than Honorable Conditions characterization of service on 22 January 1982.

4. Analysis. No legal error occurred in the imposition of any of Petitioner's 9 separate NJP's. Petitioner, however, now requests that BCNR reinstate him to the rank of lance corporal,

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pay grade E-3. In addition, Petitioner requests that BCNR upgrade his characterization of service. Petitioner's application is nearly incoherent and unsupported by evidence. Petitioner appears to claim that his rank reduction was the result of a fight rather than unauthorized absence as indicated in his service record. Even assuming that this one NJP was a result of a fight; that too is an offense under the Code. In support of this claim Petitioner alludes to a statement attached to a DD 293 sent to an unnamed individual or organization in Arlington, Virginia. Absent additional information we are unable to obtain or evaluate the relevance of this statement. Similarly, Petitioner indicates that Case # 314/212B at the Veteran's Affairs Regional Office in Roanoke, Virginia supports his claim but fails to attach a copy of this case file to his application. Given that a presumption of regularity attaches to official records, the burden is on the Petitioner to establish any irregularity. In this case, Petitioner has failed to meet that burden by failing to provide any evidence to establish his vague claim of error or injustice. Finally we note that Petitioner's claims are more than 10 years old and beyond the established guidelines for the correction of naval records.

5. Conclusion. For the reasons noted, we recommend that Petitioner's request for relief be denied.

[REDACTED]
Head, Military Law Branch
Judge Advocate Division