



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

BJG
Docket No: 3392-99
2 August 2001

an

[REDACTED]

Dear [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 2 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 11 May 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
JAM3

11 MAY 2001

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

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

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 17 December 1996 action vacating the suspended portion of the nonjudicial punishment (NJP) he received on 1 November 1996. Petitioner also requests restoration of all property, privileges, and rights affected by the vacation.

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

3. Background

a. On 1 November 1996, Petitioner received NJP for unauthorized absence, in violation of Article 86 of the Uniform Code of Military Justice (UCMJ). Petitioner was awarded a reduction in grade to lance corporal and forfeiture of \$558.00 pay per month for 1 month. The reduction to lance corporal was suspended for 6 months and, unless sooner vacated, was to be remitted without further action.

b. On 12 December 1996, civilian authorities arrested Petitioner for driving while intoxicated (DWI), speeding, and driving with a suspended license. Petitioner admitted to the police that he had been drinking and a subsequent breathalyzer test revealed that he had a BAC of .115 percent.

c. On 17 December 1996, Petitioner's commanding officer vacated the suspended portion of Petitioner's NJP punishment and reduced him to lance corporal.

d. Approximately 10 months later, on 23 October 1997, Petitioner agreed to the terms of a plea agreement with civilian authorities. In return for pleading guilty to a lesser moving violation, the DWI, speeding, and driving with a suspended license charges were dismissed.

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4. Analysis. Petitioner claims that because the original charges stemming from the 12 December 1996 incident were ultimately dismissed, his commanding officer's earlier decision to vacate the partial suspension of his NJP was not valid. This argument is without merit. Petitioner's plea agreement with civilian authorities did not retroactively nullify the commanding officer's independent decision to vacate the partial suspension of Petitioner's NJP. Suspended NJP may be vacated if a servicemember violates any punitive article of the UCMJ. Petitioner's BAC measured .115 percent, he was speeding, and he was driving with a suspended license at the time of his arrest. These facts provided Petitioner's commanding officer with a sufficient basis to vacate Petitioner's suspended punishment.

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

[REDACTED]

Assistant Head, Military Law Branch
Judge Advocate Division