



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

CRS

Docket No: 5149-99

30 August 2000

[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 30 August 2000. 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 opinions furnished by Headquarters, Marine Corps dated 2 November and 18 November 1999, copies of which are enclosed. The Board also considered your rebuttal statement of 15 February 2000.

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 opinions. 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

Enclosures



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:

1070
JAM2
02 NOV 1999

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

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
IN THE CASE OF FORMER [REDACTED]
[REDACTED] U.S. MARINE CORPS

1. We are asked to provide an opinion on Petitioner's request for upgrade of the characterization of his discharge to Honorable, and for assignment of a "reentry code" that will not preclude successful pursuit of a career in military aviation.

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

3. Background

a. On 12 February 1999, Petitioner received nonjudicial punishment (NJP) for a single violation of Article 134, UCMJ, for fraternizing with a female Navy petty officer while he was a student pilot assigned to Marine Aviation Training Support Group, Corpus Christi. He was awarded a letter of censure, and did not appeal.

b. On 31 March 1999, the Deputy Chief of Staff for Manpower and Reserve Affairs (DC/S M&RA), as the Show Cause Authority for the Marine Corps, initiated adverse administrative separation processing using the notification procedure. Petitioner responded in writing on 14 April 1999, opposing both the use of the notification procedure and the proposed discharge.

c. On 15 June 1999, DC/S M&RA recommended to the Secretary of the Navy that Petitioner be discharged with a General (Under Honorable Conditions) characterization of service based on his inappropriate relationship with the female petty officer. DC/S M&RA noted specifically that Petitioner's relationship with the petty officer was sexual in nature. On 23 June 1999, the Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN(M&RA)) directed Petitioner's discharge with a General (Under Honorable Conditions) character of service.

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

e. Petitioner's generalized complaint that his discharge was inequitable -- because he committed no other misconduct during his active service, because the petty officer was not in his chain of command, because other people committed similar misconduct in a permissive command environment, and because he effectively turned himself in -- is unpersuasive. Whether Petitioner's misconduct disqualified him from holding a commission is a determination left to ASN(M&RA)'s sound discretion. Petitioner made these same arguments to ASN(M&RA), who weighed and rejected them.

f. Petitioner correctly asserts that there is no direct evidence that he engaged in sexual activity with the petty officer. In her 13 December 1998 statement, the petty officer characterized her relationship with Petitioner as "dating."¹ She also stated that she had engaged in sexual intercourse during the several days leading up to 13 December. She did not explicitly state, however, that she and Petitioner had engaged in sexual intercourse. The 8 January 1999 affidavit given by Naval Criminal Investigative Service Special Agent Reed does assert that the petty officer claimed to have had sexual intercourse with Petitioner. That affidavit, however, is not based upon a first-hand conversation; it merely paraphrases -- imprecisely, in this specific regard -- the 13 December statement. It is clear from the latter statement, however, that Petitioner engaged in a wholly inappropriate relationship with the subordinate. That statement, combined with the fact that Petitioner was the first person the subordinate called in the middle of the night after her alleged sexual assault, provides persuasive circumstantial evidence of a sexual relationship between the two, i.e., that Petitioner was the unnamed sexual partner referred to in the statement. Accordingly, DC/S M&RA could fairly conclude that the relationship was sexual in nature and could advise ASN(M&RA) of that conclusion. ASN(M&RA) could also reach the same conclusion, and could separate Petitioner

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¹ We note as an aside that Petitioner's reliance on the letter from Ms. [REDACTED] is misplaced. Petitioner mischaracterizes the letter as an "affidavit," and argues that its contradiction of the petty officer's sworn statement renders the latter unreliable. It does not. A sworn statement given by a person subject to prosecution for making a false complaint is not outweighed by an unsworn statement given nearly four months later. The probative value of the letter is further compromised by its intemperate tone.

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

with a General (Under Honorable Conditions) characterization as
a result.

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

[REDACTED]
Head, Military Law Branch
Judge Advocate Division



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1741
MMSR-6
18 Nov 99

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

Subj: BCNR APPLICATION IN THE CASE OF FORMER [REDACTED]

Ref: (a) MMR Route Sheet of 9Sep99, Docket No. 5149-99.
(b) JAM-2 Advisory Opinion 1070 of 2Nov99

1. Reference (a) requests an advisory opinion on former First [REDACTED] petition to correct his record to change the characterization of his discharge and his reenlistment code.
2. Former [REDACTED] was discharged under proper authority in accordance with current regulations and policy. He was not assigned a reenlistment code when discharged.
3. We, therefore, must regretfully concur with reference (b) and recommend that former First [REDACTED] petition not be granted favorable consideration.

[REDACTED]

Head, Separation and
Retirement Branch
By direction of the Commandant
of the Marine Corps