



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

CRS
Docket No: 5781-00
21 March 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 20 March 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 13 February 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

13 FEB 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 [REDACTED]

Encl: (1) Copy of page 12, Petitioner's SRB

1. We are asked to provide an opinion on Petitioner's request that his non-judicial punishment (NJP) be expunged from his service record book (SRB) and official military personnel file (OMPF).

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

3. Background. On 21 October 1996, Petitioner, then a corporal, received NJP for indecent assault in violation of Article 134, Uniform Code of Military Justice. He was awarded a reduction in grade to lance corporal (LCpl), forfeiture of \$604.00 per month for 1 month, and 30 days extra duty. The reduction in grade and forfeiture were suspended for a period of 3 months. Petitioner did not appeal his NJP.

4. Analysis

a. Petitioner now asserts that his NJP was unjust because there was insufficient evidence to support the charge; because the legal advice he received was not in his best interest; and because his performance was and has been otherwise meritorious.

b. Petitioner's claim that his NJP was unjust due to insufficient evidence is without merit. Non-judicial punishment is an administrative proceeding, not a criminal trial; formal rules of evidence, therefore, do not apply. Moreover, the standard of proof at NJP is "by a preponderance of the evidence" rather than "beyond a reasonable doubt." Petitioner's application to BCNR indicates that the alleged victim provided the command with a statement describing the incident.

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
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In addition, enclosure (2) of Petitioner's application describes this incident as a case of "he said, she said." While it is not possible to determine exactly what evidence persuaded the Petitioner's commanding officer of his guilt, that officer could properly choose to believe the alleged victim's statement over the accused's denials. Moreover, given that a presumption of regularity attaches to official records, and that Petitioner failed to appeal his NJP, we find no merit in Petitioner's claim that his NJP was unjust due to a lack of evidence.

c. Petitioner's claim that the legal advice he received was not in his best interest is without merit. Petitioner fails to provide any evidence to support this claim. Moreover, while the opportunity to consult with counsel is a prerequisite for the admission of records of NJP as sentencing evidence at a subsequent court-martial, it is not a prerequisite to the imposition of NJP itself. Accordingly, Petitioner is not entitled to any relief based on his assertion that he was ill-advised by counsel.

d. Petitioner's claim that his otherwise meritorious performance renders his NJP unjust is without merit. Petitioner's performance before and after the NJP is simply not relevant to the commanding officer's decision to award NJP for the incident in question.

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

[REDACTED]
Assistant Head, Military Law Branch
Judge Advocate Division