



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

BJG
Docket No: 6138-01
18 April 2002

SSGT [REDACTED] SMC
[REDACTED]
[REDACTED]

Dear Staff Sergeant [REDACTED]

This is in reference to your application dated 23 July 2001 for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

You requested reconsideration as to your service record page 11 counseling entry dated 21 April 1998. Your previous request to remove this entry, docket number 1225-99, was denied on 12 August 1999. You also made new requests to remove your page 11 counseling entry dated 16 April 1999 and your special court-martial of 28 and 29 July 1998.

It is noted that the Commandant of the Marine Corps has directed removal of the court-martial.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, reconsidered your case on 18 April 2002. 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 current application, together with all material submitted in support thereof, the Board's file on your prior case (including the advisory opinion furnished by Headquarters Marine Corps (HQMC) dated 15 April 1999, a copy of which is attached), your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions from HQMC dated 12 February and 8 March 2002 with enclosure, copies of which are 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 opinions in your current case in concluding that the contested page 11 entries should stand. Accordingly, the Board again voted to deny relief. 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
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1070
MIF
15 APR 98 *sm*

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF SSG

1. We reviewed SSgt application and supporting documents concerning the request for removal of counseling entry noted on page 11, Administrative Remarks.
2. MCO P1070.12, Marine Corps Individual Records Administrative Manual (IRAM) authorizes commanders to make service record book (SRB) entries on page 11 for those entries considered essential to document an event in a Marine's career for which no other means or methods of recording exists.
3. The page 11 counseling entry dated 21 ^{April} ~~March~~ 1998, being requested for removal meets the standard for counseling in that it list specific deficiencies, recommendations for corrective action, and where assistance could be found.
4. In view of the above it is recommended that the request for removal of page 11 counseling entry be denied.
5. As to the question of the page 11 entry being prejudicial based on the member's acquittal we recommend that the office of the Staff Judge Advocate of the Marine Corps provide advisory opinion and recommendation.

Head, Manpower Information System
Field Support Branch
Manpower Management Information
System Division
By direction
Commandant of the Marine Corps



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

6139-0
IN REPLY REFER TO
1070
JAM2/7
FEB 12 2002

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

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

1. Issue. We are asked to provide an opinion on Petitioner's request that BCNR remove a Page 11 counseling entry and a "report of results of special court-martial" be removed from his record. Petitioner had previously requested that BCNR remove the Page 11. That request was denied.

2. Short Answer. We stand by our previous recommendation of 24 May 1999 that the requested relief as to the Page 11 be denied. However, we recommend that the request to remove the report of special court-martial be granted. Our analysis follows.

3. Background. On 17 December 1997, Petitioner apparently paid an after hours visit to the spouse of a subordinate for the purpose of conducting a unit recall. That visit resulted in a Page 11 counseling entry on 21 April 1998 for poor judgment and inappropriate behavior. Petitioner submitted a rebuttal statement to this counseling entry. The incident also apparently led to trial by special court-martial on 28 and 29 July 1998, which resulted in the Petitioner's acquittal.

4. Analysis

a. Petitioner seeks removal of the Page 11 entry because he was later acquitted of criminal charges arising out of the incident. That would be a sufficient basis to remove such a record if the record referred to criminal charges or disciplinary action. However, neither the counseling entry, nor Petitioner's rebuttal, mentions criminal charges, court-martial, or other disciplinary proceedings. Rather, the counseling entry appropriately records a fact of importance regarding Petitioner's military career - - that he was counseled on that day for the reasons specified. Considering also that Petitioner included a detailed description of his version of events regarding the incident in his rebuttal statement, we find no

613801

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

error or injustice warranting removal of this Page 11 counseling entry.

b. As for the report of special court-martial, the request to remove it from his official records should be granted per Paragraph 4008.2(a)(7) of MCO P1070.12K. Petitioner was acquitted of all charges.

5. Conclusion. Accordingly, we recommend relief be denied as to the request to remove the p.11 entry and granted as to the request to remove the report of results of trial by special court-martial.

[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:

1070

MIFD

8 MAR 2002

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF STAFF SERGEANT [REDACTED]
[REDACTED] USMC

Ref: (a) MEMORANDUM FOR Executive Director, Board for
Correction of Naval Records letter 1070 MIF dated
15 Apr 99

Encl: (1) Head, Field Support Branch MEMORANDUM dated 6 Mar 2002

1. We were asked to review Staff Sergeant [REDACTED] application for the second time concerning his request for removal from his service records the Administrative Remarks (1070) NAVMC 118(11) page 11 entries dated 980421, 990416 and "report of the Special Court-Martial".

2. MCO P1070.12J, Marine Corps Individual Records Administration Manual (IRAM), paragraph 4010, authorizes commanders to make entries on page 11 which are considered matters forming an essential and permanent part of a Marine's military history, which are not recorded elsewhere in the Service Record Book (SRB), medical records, or the Marine's automated record. Paragraph 1000.6 provides guidance and information on documentation that is appropriate for inclusion in a Marine's official military personnel files (OMPF).

3. MCO 1610.12, the U.S. Marine Corps Counseling Program states that:

a. "Counseling is that part of leadership which ensures, by mutual understanding, that the efforts of leaders and their Marines are continuously directed toward increased unit readiness and effective individual performance.

b. Increase individual performance and productivity through counseling and thereby increases unit readiness and effectiveness.

c. Counseling enhances the leader's ability to improve the junior's performance."

Subj: BCNR APPLICATION IN THE CASE OF STAFF SERGEANT [REDACTED] USMC

4. JAGINST 5800.7, Manual of the Judge Advocate General (JAGMAN) provides guidance and instructions concerning the issuance and distribution of courts-martial promulgating orders.

5. One of the many leadership tools that a commander has at their disposal is counseling and rehabilitation for their Marines. Marine Corps policy is that reasonable efforts at rehabilitation should be made prior to initiation of separation proceedings and that the commander is authorized to document those efforts by a page 11 counseling entry per the IRAM. The Marine Corps Separation Manual, paragraph 6105, sets forth policy pertaining to counseling and rehabilitation. In cases involving unsatisfactory performance, pattern of misconduct, or other bases requiring counseling under paragraph 6105, separation processing may not be initiated until the Marine is counseled concerning deficiencies, and afforded a reasonable opportunity to overcome those deficiencies as reflected in appropriate counseling and personnel records.

6. The following comments/opinions concerning the page 11 entries dated 980421 and 990416 are provided:

a. The counseling entries do meet the elements of a proper page 11 counseling in that they list deficiencies, recommendations for corrective action, available assistance, and states that Staff Sergeant [REDACTED] as provided the opportunity to make a rebuttal statement. Additionally, the entries afford him an opportunity to annotate whether or not he chose to make such a statement and if made, a copy of the statement would be filed in the Service Record Book (SRB).

b. Staff Sergeant [REDACTED] acknowledged the counseling entries by his signature and indicated his desire to make a statement in rebuttal.

c. Staff Sergeant [REDACTED]s claim that the page 11 entries are "prejudicial that disciplinary action follow these proceedings" is irrelevant. The event, counseling, did in fact take place and that the contents of these entries do not reference disciplinary actions taken by his commander or information concerning an acquittal from a court-martial proceeding.

d. Staff Sergeant [REDACTED] does not provide a rebuttal statement to the page 11 entry dated 990416 to contest, explain, and refute the contents of the page 11 entry.

Subj: BCNR APPLICATION IN THE CASE OF STAFF SERGEANT [REDACTED] USMC

e. Staff Sergeant [REDACTED] does not provide documented evidence to support his request to remove the page 11 entries from his service records.

7. The following comments/opinions concerning the "report of the Special Court-Martial" are provided:

a. Staff Sergeant [REDACTED] claim why he believes that his records are in error or unjust is supported by the JAGMAN, Head, Military Law Branch, Judge Advocate Division letter 1070 JAM2/7 dated Feb 12, 2002, and the IRAM.

b. The enclosure is forwarded, informing the Board that partial relief of Staff Sergeant [REDACTED] requested action was administratively granted by this office.

c. Upon receipt, this office will forward to the Board the documents requested in the enclosure.

8. In view of the above, our recommendations are as follows:

a. Paragraph 4 of the reference remains unchanged in that the Board for Correction of Naval Records disapprove Staff Sergeant [REDACTED] request for removal of the Administrative Remarks (1070) NAVMC 118(11) page 11 entries dated 980421 and 990416 from his service records.

b. If the Board for Correction of Naval Records find that Staff Sergeant [REDACTED] records are in error or injustice was committed, approve his request for removal of the Administrative Remarks (1070) NAVMC 118(11) page 11 entries dated 980421 and 990416 from his service records.

c. Paragraph 5 of the reference is hereby recinded.

9. Point of contact [REDACTED] at [REDACTED]

[REDACTED]
Head, Manpower Information
Systems Field Support Branch
Manpower Management Information
Systems Division

1070
MIFD
6 MAR 2002

MEMORANDUM

From: Head, Manpower Information Systems Field Support Branch,
Manpower Management Information Systems Support Division
To: Head, Records Correspondence Section, Personnel Management
Support Branch

Subj: CORRECTION OF THE OFFICIAL MILITARY PERSONNEL FILE (OMPF)
PERTAINING TO STAFF SERGEANT [REDACTED]
USMC

Ref: (a) MCO P1070.12
(b) JAGINST 5800.12

Encl: (1) Copy of Special Court-Martial Order Number 4-98
(2) Copy of Head, Military Law Branch Judge Advocate
Division ltr 1070 JAM2/7 dated Feb 12, 2002

1. The Board for Correction of Naval Records (BCNR) has requested that this Division review the subject named Marine's official military personnel files (OMPF) regarding his alleged claim of error and injustice to his records. Staff Sergeant [REDACTED] has requested that the erroneous information, enclosure (1), be removed from his service records which can be granted administratively by this Division as authorized by reference (a). Staff Sergeant [REDACTED] claim is supported by reference (b) which prohibits that a copy be included in the service records when the proceedings resulted in an acquittal of all charges. Additionally, enclosure (2), also has concluded that the document is erroneously filed in Staff Sergeant [REDACTED] OMPF.

2. Based upon this review, it has been determined that the following errors require corrective action. Request that the document contained in enclosure (1) be expunged from Staff Sergeant [REDACTED] OMPF and forwarded to this Branch for disposition.

3. Please advise the point of contact [REDACTED] ext [REDACTED] or by EMAIL at [REDACTED], of actions completed.

[REDACTED]

Encl (1)