



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

CRS  
Docket No: 6299-01  
6 March 2002

[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 6 March 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 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 28 November 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



28 NOV 2001

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

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IN THE CASE OF [REDACTED]

1. We are asked to provide an opinion on Petitioner's request that his non-judicial (NJP) punishment of May 17, 2001 be removed from his service record book and official military personnel file (OMPF).

2. We recommend that partial relief be granted. Our analysis follows.

3. Background

a. On April 26, 2001, Petitioner was wearing an organizational uniform incorrectly (i.e. blue coveralls with white socks) and was directed by a sergeant, a superior noncommissioned officer (NCO), to put on green or black socks. Petitioner initially asserted that he did not have the appropriate color socks and had left them at his workspace. Petitioner defiantly talked back saying words to the effect, "no organization had issued him that uniform" and later telling a master sergeant "that he had his socks in his pocket."

b. On the same day, while conducting field day in his barracks room, Petitioner was given direction on making his rack by a corporal, a superior noncommissioned officer. After being informed that his room would be reinspected later, Petitioner responded with an inappropriate comment by saying, words to the effect "I'll have coffee and doughnuts ready for you." The NCO took offense to the comment.

c. On May 17, 2001, Petitioner received NJP for disrespect, disobedience, and insubordinate conduct towards two noncommissioned officers, in violation of Article 91 and Article 92 of the Uniform Code of Military Justice (UCMJ), respectively. Petitioner was awarded 14 days restriction, 14 days extra duties and a forfeiture of 7 days pay per month for 2 months. The NJP authority suspended the forfeiture of 7 days pay per month for 2

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months for a period of 3 months. Petitioner acknowledged understanding of his appeal and indicated that he intended to appeal; however, Petitioner did not appeal the punishment.

d. On 8 August 2001, [REDACTED], Senior Defense Counsel, Marine Corps Base, Hawaii submitted a request for relief of NJP. The basis of relief was that the noncommissioned officers "abandoned their rank" prior to providing instruction and directing corrective action to the Petitioner, a subordinate.

#### 4. Analysis

a. There is no "obvious or blaring" injustice in the conduct of Petitioner's NJP. Petitioner was simply insubordinate toward his superior NCO's. The instructions and counselings given to the Petitioner by his superiors were legal and Petitioner had duty to obey. Therefore, Petitioner's inappropriate and sarcastic comments display a total disregard for authority and was a breach of discipline punishable under the UCMJ. Whether Petitioner's superior's "disliked" Petitioner is immaterial. Furthermore, Petitioner was advised of his rights regarding NJP and knowingly and voluntarily accepted NJP.

b. A legal error, however, did occur, albeit not raised by the Petitioner, in the imposition of NJP punishment regarding the forfeiture of 7 days pay for 2 months. A company grade officer imposing NJP, only has the authority to award the forfeiture of 7 days pay for 1 month. Although Petitioner acknowledged understanding of the notification and election of rights prior to the imposition of NJP, and acknowledged understanding of his appeal rights post NJP, we question why he failed to submit an appeal regarding this unauthorized punishment. Regardless, that portion of the punishment that extends to forfeiture of 7 days pay per month for a second month was an illegal punishment.

c. Additionally, the LEGADMINMAN provides detailed instructions for completing the Unit Punishment Book (UPB) form (NAVMC 10132) which is utilized to record the imposition of NJP for enlisted personnel. After review of the UPB, we identified the following discrepancies, item #8 states forfeiture of 7 days pay per month for 2 months, where forfeitures should always be

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stated in whole dollar amounts, and item #11 was not signed by the officer imposing NJP. Neither of these administrative errors were addressed by Petitioner. Additionally neither of these administrative errors merit relief.

d. Captain Hennessey's contention that Petitioner's NJP is unjust due to the noncommissioned officers "abandonment of their rank" is disingenuous. First, there is no evidence to substantiate [REDACTED] claim. Second, and more importantly, although non-judicial punishment is an administrative proceeding and not a criminal trial, Petitioner after having the opportunity to review the evidence and consult with counsel, pleaded guilty to the two violations of Article 91, UCMJ.

5. Conclusion. For the reasons noted, we recommend that Petitioner's request that his NJP be removed from his record be denied; however, that his record be corrected to reflect forfeiture of only 7 days pay per month for 1 month.

[REDACTED]  
Head, Military Law Branch  
Judge Advocate Division