



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

TRG
Docket No: 7569-00
28 August 2001

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 28 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 two advisory opinions furnished by Headquarters Marine Corps and the analysis of the Joint Travel Regulations which was prepared in your case, copies of which are enclosed.

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

Enclosures



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

IN REPLY REFER TO:

1070

JAM4

11 JUN 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) Page 11, Petitioner's SRB
(2) Page 12, Petitioner's SRB

1. We are asked to provide an opinion on Petitioner's request to be reinstated to the rank of lance corporal because his reduction in rank at his non-judicial punishment (NJP) of 31 August 1998 was unjust.

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

3. Background

a. On 14 January 1998, Petitioner received a page-11 entry in his SRB for financial irresponsibility. This entry indicates that Petitioner was previously counseled for financial irresponsibility in August of 1997.

b. On 13 February 1998, Petitioner received a page-11 entry in his SRB for violating Article 134 of the UCMJ by writing worthless checks in the amount of \$410.00.

c. On 8 August 1998, Petitioner received NJP for writing a worthless check for \$208.53 in violation of Article 134, UCMJ. Petitioner was awarded a reduction in rank to private first class. Petitioner did not appeal.

4. Analysis

a. No legal error occurred in the imposition of NJP. Petitioner, however, now asserts that his reduction in rank was unjust because: (1) he suffered from a chronic adjustment disorder and was involved in a domestic situation when he wrote the worthless check; (2) he received pay on the day he wrote the worthless check, and; (3) the date of the worthless check was incorrectly recorded in the NJP findings.

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

b. Petitioner's claim that his reduction in rank was unjust because he suffered from a chronic adjustment disorder and was involved in a domestic situation is without merit. Petitioner provides no evidence establishing that he suffered from a mental disorder or was experiencing domestic difficulties. Moreover, even if he provided evidence to that effect, the mitigating influence of that evidence would be insignificant because Petitioner had repeatedly been counseled for financial irresponsibility. Furthermore, Petitioner had recently received NJP for a separate minor offense. Given Petitioner's pattern of misconduct, the punishment Petitioner received appears not only just, but also lenient.

c. Petitioner's claim that his reduction in rank was unjust because he received pay on the day he wrote the worthless check is specious. Despite being repeatedly counseled concerning his financial irresponsibility, Petitioner elected to write a check without sufficient funds in his account to cover it. Without an opportunity to review Petitioner's financial records (e.g. bank statement and check ledger), the fact that Petitioner received pay on the day he wrote the check is not material. Generally individuals may write checks in anticipation of pay, however, once pay is credited to an account, disbursement of funds is made regarding checks already presented for payment. In other words, we can infer that there were insufficient funds in Petitioner's account at the time the check was presented to the bank for payment.

d. Petitioner's claim that the date of the worthless check he wrote was incorrectly recorded in the NJP findings is without merit. Unit punishment book records are destroyed after 2 years, therefore, it is not possible to verify Petitioner's claim that the NJP findings were factually incorrect. Petitioner, however, accepted NJP after being afforded the opportunity to consult with an attorney. We, therefore, can infer from Petitioner's decision to accept NJP and his decision not to appeal his punishment that he did not believe the imposition of NJP or the punishment awarded to be unjust at the time they were imposed. Given that a presumption of regularity attaches to official records, the burden is on the Petitioner to establish any irregularity. Petitioner, however, fails to provide any evidence that the NJP findings were incorrect. Moreover, even if the date of the worthless check was incorrectly recorded, that administrative error is harmless

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IN THE CASE OF [REDACTED]

because it does not alter the fact that Petitioner committed the offense for which he was punished.

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

[REDACTED]
Head, Military Law Branch
Judge Advocate Division

30 Jan 95 Enlisted USMC active duty

31 Jan 95 arrived Parris Island Recruit Training

21 Apr 95 departed Parris Island 10 days leave enroute to

2 May 95 arrived [REDACTED] - Cmbt Tng

25 May 95 departed [REDACTED] enroute to

26 May 95 arrived MCLB Albany GA 1st School - Test
Measurement Diag Equipment Repair - School
13 Mos - comp 11 mos

Dependents were moved at government expense to Albany GA; however, when he received orders to go to School New River JAX NC for personal reasons the dependents moved back to NY at personal expense. Petitioner now claiming travel pay for dependents to travel from NY to JAX NC.

15 Apr 96 departed MCLB Albany GA enroute to new River NC

20 Apr 96 arrived MCAS New River Jax NC - Helicopter Mech Sch

Aug 96 graduated Helicopter Mech School and assigned PCA to Unit on New River JAX NC

Petitioner is not eligible for travel of dependents from New York to New River, JAX, NC since the dependents were not authorized travel to designated location because the course of the school was less than 5 months. Petitioner paid for the travel of dependents to New York when they left Albany, GA and he proceeded to New River, JAX, NC.

In accordance with Joint Federal Travel Regulations, Vol 1, para U5218 he is entitled to travel pay for his dependents not to exceed the distance from the Petitioner's old duty station (Albany, GA) to the new duty station, New River, JAX, NC.

begins. (NOTE: When travel begins more than 60 days after the effective date of the orders, entitlement is based on the dependents' ages on the 60th day after the effective date of the orders.)

E. Orders Amended, Modified, Canceled or Revoked After Travel Begins. When PCS orders are:

1. amended or modified after the date the dependents begin travel (circuitously or otherwise) and a new PDS is designated, or
2. the PCS orders are canceled or revoked,

dependents' travel and transportation allowances are authorized. Allowances are payable for the distance from the place dependents began travel to the place at which they received notification that the orders were amended, modified, canceled or revoked, and then to the new PDS or return to the old PDS, up to the travel and transportation allowances for the distance from the old PDS to the first-named station and then to the last-named station or return to the old PDS.

F. Dependents Temporarily Absent From the Old PDS, Designated Place or Safe Haven When PCS Orders Are Received. When dependents are temporarily absent from the old PDS, designated place or safe haven when the member receives PCS orders, the member is entitled to dependents' travel and transportation allowances from the old PDS, designated place or safe haven to the new PDS, provided the dependents return to the old PDS, designated place or safe haven and travel from there to the new PDS (B-195643, April 24, 1980).

G. Change of Station While on Leave or TDY. When a member receives PCS orders while on leave or on TDY, the member is entitled to dependents' travel and transportation allowances for dependent travel up to the entitlement for travel from the old to the new PDS.

H. Dependents En Route to the New PDS at the Time of the Member's Death. When a member dies after dependents begin travel under PCS orders, they are entitled to dependents travel and transportation allowances for travel from the place travel began to the place at which they were notified of the member's death, up to travel and transportation allowances for the distance from the old PDS to the ordered new PDS. For further entitlement, see par. U5241.

I. Spouse Separates from the Service After the Effective Date of a Member's PCS Orders. A member,

1. who performs PCS travel, and
2. whose spouse on the effective date of that order is a member, but separates from the Service thereafter,

is entitled to dependents' PCS travel and transportation allowances for that spouse up to the cost for travel from the separated spouse's last PDS to the member's PDS on that PCS order.

J. Legal Custody of Children Changes After the Effective Date of PCS Orders. A member who is denied dependents' travel and transportation allowances for a child or children by par. U5203-B2f, is entitled thereto if the member is granted legal custody/legal joint custody, or otherwise lawfully acquires such custody after the effective date of the member's PCS orders. Examples of lawfully acquired custody include custody acquired as the result of the death of the non-member custodial parent or a child's election to join a member following lapse of a court order at 18 years of age.

U5218 TRAVEL INVOLVING OTHER THAN MEMBER'S OLD PDS OR OTHER THAN MEMBER'S NEW PDS

(NOTE: This paragraph doesn't apply to travel to and/or from a designated place as defined in Appendix A. Places at which dependents reside and from which the member commutes daily to the PDS aren't places "other than the old PDS" or "other than the new PDS.")

A member in receipt of PCS orders is entitled to dependents' travel and transportation allowances from other than the old PDS and/or to other than the new PDS up to the entitlement from the old to the new PDS. When transoceanic travel is involved, see pars. U5205-B and U5210.

U5220 DEPENDENTS JOIN OR ACCOMPANY MEMBER DURING TDY EN ROUTE

A. General. When dependents accompany or join a member performing TDY en route between two PDS's, entitlements for dependents' travel and transportation allowances are based on the travel actually performed using mileage and per diem rates prescribed in subpars. B and C, limited to the greater of the following:



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

IN REPLY REFER TO:

1650
MMMA-3
28Jun01

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS (BCNR)

Subj: REQUEST FOR ADVISORY OPINION(S) REGARDING VERIFICATION OF
ENTITLEMENT TO A SOUTHWEST ASIA SERVICE MEDAL IN THE CASE
OF [REDACTED] FORMER Marine

1. Based upon review of the records provided [REDACTED] is
not entitled to a Southwest Asia Service Medal, he did not
participated in an operation that was authorized this award.

2. A point of contact at MMMA is Mr [REDACTED] @ 784-9210.

[REDACTED]

Head, Military Awards Branch
Personnel Management Division
by direction of the
Commandant of the Marine Corps