



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

CRS
Docket No: 8327-01
11 July 2002

[REDACTED]

[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 10 July 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 undated advisory opinion furnished by Headquarters Marine Corps, 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, and also concluded that no clemency considerations warranted favorable action on the sentence of the summary court-martial. In accordance with applicable provisions of federal law, the Board must limit its consideration to this issue when considering courts-martial. 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

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MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL RECORDS

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

Encl: (1) Copy of Summary Court-Martial

1. We are asked to provide an opinion on Petitioner's request to reduce his 3 February 2000, Summary Court-Martial (SCM) sentence of reduction, restriction and forfeiture, to only restriction and forfeiture. Enclosure (1) is a copy of Petitioner's SCM record.

2. We recommend that Petitioner's request for relief be denied. Our analysis follows.

3. Background

a. Pursuant to a pretrial agreement (PTA), on 3 February 2000, Petitioner, a Sergeant, paygrade E-5, pleaded guilty to violations of Articles 92, 107, and 134, Uniform Code of Military Justice (UCMJ). In exchange for Petitioner's pleading guilty at SCM, the convening authority agreed to withdraw Petitioner's charges from a pending special court-martial and refer them to a SCM. The UCMJ violations were the result of Petitioner's wrongful fraternization and adultery with a junior Marine, a Lance Corporal (LCpl), paygrade E-3, and for making two false official statements denying the same. Petitioner and the LCpl were in a working superior-subordinate relationship at the time of the offenses.

b. Petitioner's adjudged sentence included the maximum punishment permitted at SCM for his paygrade: 60 days restriction, reduction to pay grade E-4, and forfeiture of two-thirds pay for 1 month (\$1070.00). The SCM recommended against clemency or suspension of the sentence. Petitioner requested the convening authority grant clemency and suspend the adjudged reduction and forfeiture. The convening authority denied Petitioner's request for a suspended reduction, however, he did reduce the adjudged forfeiture to \$267.00 per month for 1 month to allow Petitioner to support his three children. On

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
IN THE CASE OF ██████████
██████████ USMC

20 January 2001, in accordance with Rules for Courts-Martial (R.C.M.) 1112, Manual for Courts-Martial (MCM), United States (2000 ed.), a judge advocate reviewed Petitioner's SCM and found no legal error.

4. Analysis. Petitioner claims that his SCM was biased, and therefore presumably unfair, because the convening authority and SCM officer knew each other, were from the same unit, and since Petitioner was reduced one paygrade, contrary to recommendations by several witnesses that he should not be reduced. Petitioner's claims are without merit.

a. Relationship of convening authority and SCM officer. Neither the MCM, nor the Manual of the Judge Advocate General, require the convening authority and SCM officer to be strangers to each other or even be from separate units. While convening authorities are free to look outside their commands to find an officer to serve as SCM, traditionally SCM officers are selected from within the convening authority's command. Also, Article 25, UCMJ, criteria apply to SCMs;¹ therefore, the convening authority essentially must "know" the officer who will serve as SCM.

b. Composition of SCM. The function of the SCM is "to promptly adjudicate minor offenses under a simple procedure." R.C.M. 1301(b). Selecting officers from within the command facilitates the "promptly adjudicate" function of SCMs, discussed above. Moreover, to facilitate this function, the SCM convening order must simply, "designate that it is a summary court-martial and detail the summary court-martial." R.C.M. 504(d)(2). A convening authority's discretion to appoint officers as a SCM is limited only by the requirement that a SCM be composed of one commissioned officer on active duty, and unless otherwise prescribed by the Service Secretary, to be of the same service as the accused. R.C.M. 1301(a).

c. Petitioner did not object to trial by SCM. Petitioner accepted SCM and pleaded guilty to all charged offenses pursuant

¹ "When convening a court-martial, the convening authority shall detail as members thereof such members of the armed forces as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament." Art. 25(d)(2), UCMJ.

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

to a PTA.² PTAs do not prevent an accused from objecting to SCM or pleading different than agreed upon in the PTA. On 2 February 2000, the SCM conducted a preliminary proceeding to inform Petitioner, in addition to other matters, that the battalion commander detailed him as the SCM. Petitioner did not object to the officer detailed to his SCM, nor did he object to trial by SCM. Enclosure (1), Summary Court-Martial Officer's Summary, page 1. At the trial on 3 February 2000, the SCM asked Petitioner a second time whether he accepted SCM, and if he had any motions to make. Petitioner accepted SCM and made no motions. Enclosure (1), Summary Court-Martial Officer's Summary, page 2. Petitioner had two opportunities to object and failed to do so. Petitioner cannot now claim that his SCM was unfair after he accepted trial by SCM with full knowledge that his battalion commander appointed an officer from within the battalion to serve as the SCM officer. Additionally, Petitioner knew full well that he had the absolute right to object to trial by SCM. However, he accepted SCM as part of the PTA knowing that if he did object, the convening authority could refer his charges to a Special Court-Martial.

d. Witness' desire for limits on punishment. Petitioner's belief that his SCM was unfair because the SCM did not follow the recommendations of various witnesses to not reduce Petitioner is groundless. Subject to limitations of the MCM, the sentence to be adjudged is a matter within the sole discretion of the court-martial, in this case, the SCM officer. R.C.M. 1002. Therefore, since Petitioner's sentence was subject to the SCM's discretion, a claim of unfairness based on the notion that the SCM failed to follow a witness' recommendation or desire is absurd.

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

[REDACTED]
Head, Military Law Branch
Judge Advocate Division

² Additionally, Petitioner was represented by a military lawyer certified in accordance with Art. 27(b), UCMJ. Under the terms of the PTA, signed by Petitioner and his defense counsel, Petitioner certified that he was satisfied with his defense counsel and the offer to plead guilty originated with him and his counsel.