



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

BJG  
Docket No: 5978-03  
17 October 2003

CAPT ██████████ USMC  
██  
██  
██

Dear Captain ██████████

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 17 October 2003. 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 19 August 2003, 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. The Board was unable to find the officer who signed the contested endorsement was unaware that his predecessor's report of your nonjudicial punishment recommended you not have a board of inquiry at all. In view of the above, 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

AUG 19 2003

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL  
RECORDS

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USMC

1. The military law branch was tasked with providing an opinion on Petitioner's request to remove from his official military personnel file (OMPF) the Commander, Marine Forces Reserve, endorsement (ltr 1920 SJA/ccm of 25 Oct 01) to the report of Petitioner's Board of Inquiry.

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

3. Background

a. In December 1998 and September 1999, during drill weekends, Petitioner arranged two platoon functions known as "Warrior Night." The events generally mirrored a traditional Mess Night and consisted of a social hour, dinner, toasts, skits and fines. Petitioner authorized punch with alcohol and individual Marines attending were allowed to bring beer. Petitioner hired strippers/exotic dancers that performed for his Marines in a mess hall aboard Marine Corps Base, Camp Pendleton. The most junior Marines were placed in the center of the room and were used as props in the dancers' act. Petitioner personally viewed and allowed the performances of the exotic dancers that included indecent acts performed by the women in the presence of, and in some instances, with direct participation by Petitioner's subordinates.

b. On 8 August 2000, the Commander, Marine Forces Reserve, imposed nonjudicial punishment (NJP) upon Petitioner for dereliction of duty (Article 92, Uniform Code of Military Justice (UCMJ)), disobedience of a lawful general order prohibiting hazing (Article 92, UCMJ), conduct unbecoming an officer and gentleman (Article 133, UCMJ), indecent acts (Article 134, UCMJ) and for sponsoring, presenting and exhibiting live obscene conduct before an audience in violation of California Penal Code Section 311.6. Petitioner was awarded

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a Letter of Censure and forfeiture of \$1,000.00 pay per month for 1 month. Petitioner admitted the misconduct and did not appeal.

c. A Board of Inquiry (BOI) was convened on 25 June 2001 and completed on 27 June 2001 at Marine Corps Base, Camp Pendleton, California. The BOI substantiated substandard performance of duty as evidenced by: (1) Petitioner's failure to demonstrate acceptable qualities of leadership required of an officer of his grade; and (2) Petitioner's failure to properly discharge the duties expected of an officer of his grade and experience. The BOI also substantiated misconduct or moral or professional dereliction as evidenced by the commission of military or civilian offenses, which, if prosecuted under the UCMJ, could be punished by six months or more, or would require proof of specific intent for conviction. Specifically, the BOI substantiated each violation for which NJP had been earlier imposed. The BOI recommended Petitioner's retention.

d. On 25 October 2001, the Commander, Marine Forces Reserve, signed his first endorsement of the report of the BOI. The endorsement indicates the Commander's dissatisfaction with the recommendation for retention by the BOI and that the evidence supported separation with an Under Other Than Honorable Conditions characterization of service.

4. Analysis. Petitioner claims that the Commander's endorsement should be removed from his OMPF because it is "slanted," "prejudicial," "biased" and "slanders" the members of the BOI. Petitioner's claim is without merit.

a. Per paragraph 2(m) of Enclosure (8) to Secretary of the Navy Instruction (SECNAVINST) 1920.6B, the Convening Authority is required to review and endorse the record of proceedings prior to forwarding via the Deputy Commandant for Manpower and Reserve Affairs (DC M&RA) to the Secretary of the Navy. The Convening Authority endorsement properly reflects his opinions and recommendations as to disposition. The Convening Authority was free to voice his disagreement with the Board's recommendation for retention. There is nothing unfair or inappropriate in the document.

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b. Pursuant to paragraph 1000.4c(2)(a) of the Marine Corps Individual Records Administration Manual (IRAM) (MCO P1070.12K) the endorsement is properly included in Petitioner's OMPF as a report or correspondence containing adverse material.

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

[REDACTED]

Head, Military Law Branch  
Judge Advocate Division