



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

CRS
Docket No: 1718-01
15 August 2001

[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 15 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 advisory opinion furnished by Headquarters Marine Corps dated 6 July 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



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

IN REPLY REFER TO:

1070

JAM4

6 JUL 2001

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

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

Ref: (a) Manual for Courts-Martial, United States (2000 ed.),
Part V, ¶ 6d

1. We are asked to provide an opinion on Petitioner's request for the removal from his service record book (SRB) and his official military personnel file (OMPF) of all entries related to his non-judicial punishment (NJP) of 22 August 1998.

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

3. Background

a. On 20 July 1998, Petitioner violated the Marine Corps Recruit Depot's standard operating procedure by requiring his recruits to throw their boots into the center of the squad bay and the ordering them to quickly retrieve their footgear. As a result of his actions, some of his recruits wore the wrong footgear for the next several training days. No recruit was physically injured as a result of Petitioner's actions.

b. On 2 September 1998, Petitioner received NJP for disobedience of a lawful order in violation of Article 92 of the Uniform Code Of Military Justice (UCMJ). Petitioner was awarded a forfeiture of \$363.00 pay per month for 1 month. Forfeiture of pay was suspended for 2 months. Petitioner did not appeal.

c. On 7 February 2001, the commanding officer who imposed Petitioner's NJP requested that BCNR remove all record of Petitioner's NJP from Petitioner's SRB and OMPF.

4. Analysis. Petitioner's NJP was neither illegal nor unjust. Thirty months later, after Petitioner was passed over for promotion by the CY00 Staff Sergeant Selection Board, Petitioner's former commanding officer recommends that Petitioner's NJP be set aside. Petitioner's former commanding officer makes this recommendation because he is concerned about

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

the impact Petitioner's NJP record might have on Petitioner's opportunity for selection from the above zone by the CY01 Staff Sergeant Selection Board. Thirty months ago, however, when the facts and circumstances of Petitioner's misconduct were fresh, Petitioner's commanding officer made the decision to impose NJP. Petitioner accepted NJP and did not appeal. Reference (a) authorizes commanding officers to set aside NJP within a reasonable time in order to rectify a clear injustice. In this connection, 4 months is considered reasonable. Petitioner's failure of selection, however, does not constitute a clear injustice as envisioned by reference (a). Petitioner's NJP, therefore, should not be disturbed. Moreover, if Petitioner's commanding officer believed a clear injustice had occurred, absent unusual circumstances he had four months in which to set aside the NJP.

5. Conclusion. For the reasons noted, we recommend that Petitioner's request for relief be denied.

[REDACTED]
Head, Military Law Branch
Judge Advocate Division