



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

CRS

Docket No: 5360-99

16 August 2000

[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 16 August 2000. 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 the Assistant Staff Judge Advocate for Military Law, Headquarters Marine Corps dated 22 June 2000, 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

22 JUN 2000

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]

1. We are asked to provide an opinion on Petitioner's request that his nonjudicial punishment (NJP) of 6 June 1956 be overturned and that he be reinstated to the grade of sergeant.

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

3. Background. On 6 June 1956, Petitioner was punished at NJP for violating a battery order that prohibited the wearing of the utility uniform in the mess hall. Petitioner was awarded a reduction in grade from sergeant to corporal. Petitioner did not appeal. Petitioner was honorably discharged from active duty on 11 October 1956. Petitioner now contends that his NJP should be expunged because his punishment was an attempt by his command, by punishing a caucasian Marine, to avoid the perception of racial prejudice where it intentionally targeted an African-American Marine for punishment. In addition, Petitioner claims that the severity of the offense did not merit the punishment he received.

4. Analysis

a. Petitioner's claim that his NJP was motivated by racial prejudice is without merit. Given that a presumption of regularity attaches to official records, the burden is on the Petitioner to provide evidence that the record is erroneous. Petitioner has not offered any evidence that his NJP was imposed for an improper purpose. Further, Petitioner did not appeal his NJP on this or any other grounds at the time.

b. Petitioner's claim that his offense did not warrant the punishment he received is without merit. Petitioner admits to violating a battery order, but expresses his view that "the offense was nothing." Petitioner had the opportunity to appeal the severity of his punishment at the time but chose not to appeal. While it fails to establish any discriminatory motivation behind the NJP, Petitioner's application does

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

establish that his punishment was consistent with that awarded to another Marine for the same offense.

5. Conclusion. We note Petitioner's honorable and faithful service. The facts of this case, however, do not warrant reconsideration of the handling of his NJP 44 years after the fact. Further, the Government's interest in finality weighs against Petitioner's request. Accordingly, we recommend that the requested relief be denied.

[REDACTED]  
Head, Military Law Branch  
Judge Advocate Division