



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

TRG
Docket No: 8205-00
8 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 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 8 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, a copy of which is 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 concerning the nonjudicial punishment you received on 13 October 1999. In addition, the Board concluded that the commanding officer did not abuse his discretion when he imposed punishment which included in reduction in rank from CPL (E-4) to LCPL (E-3).

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
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 LANCE CORPORAL [REDACTED]
[REDACTED] USMC

Ref: (a) Article 15, UCMJ

1. We are asked to provide an opinion on Petitioner's request for the removal from his service record book (SRB) and official military personnel file (OMPF) of all entries related to the non-judicial punishment (NJP) he received on October 13, 1999 and restoration of all property, privileges, and rights affected by that NJP.

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

3. Background. During May 1999, Petitioner typed a promotion warrant he knew to be false because the Marine was not due to be promoted and the promotion warrant was not accompanied by any supporting documents. On 13 October 1999, Petitioner, then a corporal, pay grade E-4, received NJP for intending to deceive by wrongfully typing an official document, in violation of Articles 134 of the Uniform Code of Military Justice (UCMJ). Petitioner was awarded a reduction to the pay grade of E-3, forfeiture of \$612.00 pay per month for 1 month, and 60 days restriction. The forfeiture of pay was suspended for 6 months. Petitioner appealed. Petitioner's appeal was denied.

4. Analysis. No legal error occurred in the imposition of NJP. Petitioner, however, claims that his NJP was unjust because he was just following the orders of his staff sergeant when he typed the false official document. Petitioner's argument is without merit. In his interview with the Criminal Investigations Division, Petitioner stated that he knew the promotion warrant he typed was most likely false because he knew the Marine was not due to be promoted and there were no supporting documents. While Marines have a duty to obey lawful orders, that duty to obey does not extend to orders they know to be unlawful. Claiming that he was just following orders,

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therefore, does not provide a defense where Petitioner knew the order to be unlawful.

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

[REDACTED]
[REDACTED]
Head, Military Law Branch
Judge Advocate Division