



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

SMC
Docket No: 08343-00
1 November 2001

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: GYSG [REDACTED] USMC [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 dtd 1Dec00 w/attachments
(2) HQMC MIFD memo dtd 1Mar01 and
JAM3 memo dtd 17May01
(3) Subject's ltr dtd 24Jul01 w/encls
(4) HQMC JAM7 memo dtd 15Aug01
and MIFD memo dtd 13Sep01
(5) Subject's naval record

1. Pursuant to reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected by removing the Commanding Officer, Marine Security Guard Battalion letter dated 17 December 1996, Subject: Relief for Cause from the Marine Security Guard Program in the Case of [Petitioner]. A copy of this letter is at Tab A.

2. The Board, consisting of Messrs. Hogue, Kastner and Mazza, reviewed Petitioner's allegations of error and injustice on 1 November 2001, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. In their original advisory opinions at enclosure (2), the Headquarters Marine Corps (HQMC) offices having cognizance over the subject matter addressed in Petitioner's application commented to the effect that his request did not warrant favorable action.

c. Enclosure (3) is Petitioner's rebuttal to the unfavorable advisory opinions at enclosure (2), with which he included additional supporting evidence.

d. In their revised opinions at enclosure (4), the cognizant HQMC offices recommended that Petitioner's request be approved in light of the additional evidence at enclosure (3).

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (4), the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing the Commanding Officer, Marine Security Guard Battalion letter 1626 LEG dated 17 December 1996, Subject: Relief for Cause from the Marine Security Guard Program in the Case of [Petitioner].

b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder

Jonathan S. Ruskin
JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



for W. DEAN PFEIFFER
Executive Director



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

48343-00

IN REPLY REFER TO:

1070

MIFD

1 MAR 2001

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF GUNNERY SERGEANT [REDACTED]
[REDACTED] USMC

1. We reviewed Gunnery Sergeant [REDACTED] application and supporting documents concerning his request for removal of the Commanding Officer, Marine Security Guard Battalion letter dated 17 Dec 96 from his official military personnel files (OMPF).
2. MCO 1070.14A, Official Military Personnel Files (OMPF) Contents, sets forth guidance and provides information on the contents of the OMPF in use at Headquarters, U. S. Marine Corps and the policies and procedures for forwarding documents authorized for inclusion in the OMPF. determining whether or not certain documents are placed in the OMPF.
3. The following comments/opinions are provided pertaining to Gunnery Sergeant [REDACTED] request:
 - a. The letter is from his former commander requesting reassignment orders that reflects unfavorably upon Gunnery Sergeant [REDACTED]
 - b. The letter meets the criteria set forth in paragraph 5e(2) (b) 5 of MCO 1070.14A for inclusion in his OMPF.
 - c. Gunnery Sergeant [REDACTED] claim that "Without the NJP in my records, there is no longer justification for my relief" is irrelevant. Paragraph 6d of Part 5, Manual for Courts-Martial, authorizes a commander who imposes nonjudicial punishment, or a successor in command, may set aside punishment. This authority to set aside punishments and restore rights, privileges, and property affected by the executed or unexecuted portion of a punishment should ordinarily be exercised only within a reasonable time after the punishment has been executed. In this connection, four months is a reasonable time in the absence of unusual circumstances.

Subj: BCNR APPLICATION IN THE CASE OF GUNNERY SERGEANT [REDACTED] USMC

d. Gunnery Sergeant [REDACTED] non-judicial punishment was set aside on 7 Jun 00, 41 months later.

4. In view of the above, we recommend that:

a. The Board disapprove Gunnery Sergeant [REDACTED] request to remove the Commanding Officer, Marine Security Guard Battalion letter dated 17 Dec 96 from his OMPF.

b. We defer further comments/opinions concerning the setting aside of his non-judicial punishment to the Headquarters, U. S. Marine Corps division JAM.

5. Point of contact is [REDACTED]

[REDACTED]

Head, Field Support Branch
Manpower Management Information
Systems Division



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

45247-06
IN REPLY REFER TO:

1070

JAM3

17 MAY 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 GUNNERY SERGEANT [REDACTED]
[REDACTED] USMC

Encl: (1) MSG BnO 1300.2G

1. We are asked to provide an opinion on Petitioner's request for the removal from his official military personnel file (OMPF) of the 17 December 1996 letter from his commanding officer (CO) to the Commandant of the Marine Corps (CMC) notifying CMC of Petitioner's relief for cause from the Marine Security Guard (MSG) program.

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

3. Background

a. On 17 December 1996, Petitioner, then a staff sergeant, received non-judicial punishment (NJP) for disobeying a lawful order and false official statement, in violation of Articles 92 and 107 of the Uniform Code of Military Justice (UCMJ), respectively. The information provided does not indicate what punishment Petitioner was awarded at NJP. The information provided does include, however, a 17 December 1996 letter from Petitioner's CO notifying CMC of Petitioner's relief for cause from the MSG program.

b. On 7 June 2000, Petitioner's current CO set aside the 17 December 1996 NJP. Petitioner then successfully petitioned to have the adverse fitness report prepared on the occasion of the NJP removed from his OMPF.

4. Analysis. Petitioner claims that his NJP was the sole basis for his subsequent relief-for-cause, and argues that the letter notifying CMC of his relief-for-cause should be removed from his OMPF because his NJP was later set aside. This argument is without merit. First, although Petitioner's CO indicated in an e-mail that he supported Petitioner's request to set aside the NJP, the e-mail does not corroborate the premise of Petitioner's argument, i.e., that the NJP was the sole basis for his relief-

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

for-cause. Second, the 17 December 1996 letter was included in Petitioner's OMPF as a historical record of a specific career event, his relief-for-cause, not as a record of NJP. Third, the CO was not required to relieve Petitioner simply because he had received NJP. Enclosure (1). In the same vein, the CO could have relieved Petitioner without awarding him NJP. The fact that the CO decided to relieve Petitioner when he was not required to do so therefore reflects on the overall quality of Petitioner's service, and the decision to set aside Petitioner's NJP -- four years after the fact -- does not obviate the significance of the CO's separate action relieving Petitioner. As a result, the set-aside action neither warrants nor requires removal of the letter that memorializes Petitioner's relief. At most, redaction of any specific reference to the NJP contained in the 17 December 1996 letter would arguably be warranted based on the set-aside. Expungement of the entire letter, however, is clearly not warranted.

5. Conclusion. Based on the information provided, we recommend that Petitioner's request for relief be denied.

[REDACTED]

Assistant Head, Military Law Branch
Judge Advocate Division



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

46343-00

IN REPLY REFER TO:
1070
MIFD
13 SEP 2001

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF GUNNERY SERGEANT [REDACTED]
[REDACTED] USMC

Ref: (a) My MEMORANDUM FOR Executive Director, Board for
Correction of Naval Records letter 1070 MIFD dated
1 Mar 2001

1. We were asked to review Gunnery Sergeant [REDACTED] application for the second time concerning his request for removal of the Commanding Officer, Marine Security Guard Battalion letter dated 17 Dec 96 from his official military personnel files (OMPF).
2. Gunnery Sergeant [REDACTED] provides additional documentation in support of his request for removal of the letter from his OMPF.
3. The following additional comments/opinions concerning the letter are provided:
 - a. Paragraph 2 of the letter specifically addresses non-judicial punishment (NJP) dated 17 December 1996 as the basis for his relief for cause which was subsequently set aside and no longer is a part of his official records.
 - b. Gunnery Sergeant [REDACTED] former commander states in his letter dated 29 June 2001 that he was a solid performer during his tenure as a Detachment Commander and that the sole reason for his relief was the NJP dated 17 December 1996.
 - c. Gunnery Sergeant [REDACTED] records do not show that his conduct or performance during his tenure as Detachment Commander was anything less than outstanding.
4. In view of the above, it is requested that our recommendations in the reference be changed to read that the Board approve Gunnery Sergeant [REDACTED] request for removal of the Commanding Officer, Marine Security Guard Battalion letter dated 17 Dec 96 from his OMPF.

Subj: BCNR APPLICATION IN THE CASE OF GUNNERY SERGEANT [REDACTED]
[REDACTED] USMC

5. Point of contact is [REDACTED] at [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Director
Manpower Management Information
Systems Division
Acting