



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

CRS
Docket No: 8458-00
26 September 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 26 September 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 11 June 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

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 [REDACTED]

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 17 June 1994.

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

3. Background

a. On 25 March 1994, Petitioner was involved in a hazing incident during which a fellow Marine was held down, stripped of his clothing, and threatened with having a celery stick inserted in his rectum.

b. On 17 June 1994, Petitioner, then a lance corporal, pay grade E-3, received NJP for disobedience of a lawful order and assault in violation of Articles 92 and 128 of the UCMJ, respectively. Petitioner was awarded a reduction to the pay grade of E-2, forfeiture of \$450.00 pay per month for 2 months, and 60 days restriction. Petitioner appealed.

c. On 15 July 1994, Petitioner's commanding officer remitted the remaining portion of the 60-day restriction. Petitioner was awarded at NJP.

d. On 9 September 1994, Petitioner's NJP appeal was granted in part and denied in part. Specifically, the charge alleging disobedience of a lawful order in violation of Article 92 of the UCMJ was dismissed. No portion of Petitioner's punishment, however, was set aside.

4. Analysis

a. No legal error occurred in the imposition of NJP. Petitioner, however, now requests that his NJP be removed from his record because: (1) the page-12 entry recording his NJP was

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entered 3 months after his NJP; (2) the page-12 entry recording his NJP was entered without his signature; (3) the page-12 entry recording his NJP does not clearly or accurately state what he was charged with and found guilty of; (4) the statement "on or abt June 93 and 940325" is false and gives the impression that two NJP occurred, and; (5) the page-12 entry remitting the remaining portion of his restriction is false.

b. Petitioner's claim that his NJP should be removed from his record because it was not entered into his SRB until three months after his NJP is without merit. While prompt record keeping is desirable, it is not required. Moreover, paragraph 5002.8 of the Marine Corps Individual Records Administration Manual (IRAM) authorizes late entries to be made in a Marine's SRB.

c. Petitioner's claim that his NJP should be removed from his record because it was entered into his SRB without his signature is without merit. Paragraph 4007.2a of the IRAM requires page-12 entries recording NJP to be signed by the commander or a designated representative not the Marine receiving NJP.

d. Petitioner's claim that his NJP should be removed from his record because the page-12 entry recording his NJP does not clearly state what he was charged with because the charge of violating Article 92 was dismissed is without merit. The page-12 entry recording Petitioner's NJP satisfies all the requirements set out in paragraph 4007.2b of the IRAM for recording NJP on page-12 of a Marine's SRB. On 9 September 1994, Petitioner's commanding officer granted Petitioner's NJP appeal in part by dismissing the charge of violating Article 92 of the UCMJ. In accordance with paragraph 4001.4d, an appropriate counter-entry, recording the dismissal of the charge of violating Article 92, UCMJ, was entered on Petitioner's page-12 the same day. Petitioner's page-12, therefore, accurately reflects his record of service. Moreover, even if petitioner were correct at most the error would require redacting that portion of the page-12 entry recording the charge of violating Article 92 of the UCMJ. That portion of the page-12 entry recording the charge of violating Article 128 of the UCMJ, however, would properly remain part of Petitioner's SRB and OMPF because the charge of violating Article 128 was not dismissed.

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e. Petitioner's claim that his NJP should be removed from his record because it is misleading does not provide grounds for the relief he requests. Petitioner incorrectly asserts that the statement "on or abt Jun 93 and 940325" is misleading because it gives the impression that he received two NJP. It does not. This entry, however, does erroneously give the impression that he was involved in two separate incidents of hazing and, therefore, should be corrected. This issue, however, is moot given that the charge of violating Article 92 was dismissed and the appropriate counter-entry has been made on Petitioner's page-12 as discussed in paragraph d above. Furthermore, even if the issue were not moot, correcting this entry would not require removing all record of Petitioner NJP. It would only require amending the misleading statement to read "on or abt 940325."

f. Petitioner's claim that his NJP should be removed from his record because the entry remitting the un-served portion of his restriction is false is without merit. Given that a presumption of regularity attaches to official records, the burden is on the Petitioner to establish any irregularity. Petitioner has failed to meet this burden because he provides no evidence to support his claim that he served his entire restriction. Moreover, even if he provided such evidence that irregularity would properly be corrected by removing the entry remitting the un-served portion of his restriction. Correcting the error would not require removing all entries related to his NJP.

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

[REDACTED]
Head, Military Law Branch
Judge Advocate Division