



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

BJG
Docket No: 4313-02
3 October 2002

GMM [REDACTED] USN
[REDACTED]
[REDACTED]

Dear Petty Officer [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 26 September 2002. 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 Office of the Judge Advocate General, dated 8 July 2002, and a memorandum for the record (MFR), dated 25 September 2002, copies of which are 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, as amended in accordance with the MFR, except they did not agree that the Commanding Officer (CO), USS MERRILL letter of 28 June 1993, enclosure (2) to your application, suggested an attempt to set aside the contested nonjudicial punishment. This letter merely stated that you had been erroneously charged with a violation of Article 84, Uniform Code of Military Justice; that you had been found not guilty of this charge; and that the forfeiture of \$275.00 per month for two months, the only punishment you were awarded, should not have been taken out of your pay account. They agreed with the advisory opinion in concluding that the evidence you provided, including the CO, USS MERRILL letter, failed to establish that you were not found to have committed any of the offenses charged. Accordingly, they were unable to find that the forfeiture was invalid. They were likewise unable to find what, if any, correction was warranted to reflect accurately the specific misconduct you were found to have committed. In view of the above, 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

Enclosures



DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
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WASHINGTON NAVY YARD DC 20374-5066

IN REPLY REFER TO

5800
Ser 20/0032
8 Jul 02

From: Deputy Director, Criminal Law Division (OJAG Code 20)
To: Chairman, Board for Correction of Naval Records

Subj: REQUEST FOR COMMENTS AND RECOMMENDATION ICO GMM [REDACTED]
[REDACTED]

Ref: (a) BCNR ltr BJC Docket No. 04313-02 of 11 Jun 02 (w/encl)

1. Reference (a) requests comments and recommendation regarding the petition of [REDACTED] (Petitioner), USN, 266-39-0114, for correction of his naval record. The Petitioner makes the following requests; a) that his "personnel record be updated to reflect NJP charges being dismissed," and b) that the forfeiture of pay resulting from the NJP be repaid to him.

2. BACKGROUND:

- a. Petitioner went to [REDACTED] at Naval Recruiting District (NRD) Omaha on 29 June 1992 charged with UCMJ articles 81, 84, 92 and 107. According to the record, he was found in violation of articles 81 (conspiracy to enlist two individuals with false official documents) and 84 (effecting the enlistment of an individual known to be ineligible for enlistment). He was awarded forfeiture of \$275.00 per month for two months (NAVPERS 1070/607 dtd 30 June 1992).
- b. On 17 March 1993, the CO, USS Merrill (the Petitioner's new commander) sent a letter to the CO, NRD Omaha requesting a copy of the Report and Disposition of Offenses (RDO) of Petitioner's NJP. On 13 April 1993, the personnel officer of the USS Merrill filed a new "by dir" NAVPERS 1070/607 indicating a modification of the original NAVPERS 1070/607 was required, although it is not entirely clear what was to be modified. Finally, on 28 June 1993, CO, USS Merrill sent a letter ~~a letter~~ to the [REDACTED] Commander, Bureau of Naval Personnel requesting the removal of the article 84 conviction and the repayment of \$550.00 forfeited by Petitioner as a result of his NJP.

3. DISCUSSION:

- a. Removal of Article 84 Violation: The record indicates that the CO, USS Merrill supports the Petitioner's claim that he was erroneously charged with violation of article 84, and that the conviction should be removed from his record. It is not clear from the record, however, upon what authority that support is based. There is a separate charge sheet in which some of the charges have been lined out, but that is in no way dispositive. In fact, all other documentation, aside from the NAVPERS 1070/607 of 13 April 1993, and the letter from the CO, USS Merrill, indicates that the conviction was valid. This would suggest that the CO, USS Merrill is attempting to set aside the article 84 conviction. He does not have the authority to set aside Petitioner's NJP, however, because only the commander or NJP authority who imposed the NJP, or a successor in

