



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

BJG  
Docket No: 4616-02  
9 December 2002

CAPT [REDACTED] III USMC  
[REDACTED]  
[REDACTED]

Dear Capt [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. You requested removal of the service record page 11 ("Administrative Remarks (1070)") entry dated 4 January 1996 and your rebuttal.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 4 December 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 Headquarters Marine Corps (HQMC), dated 11 July 2002, and a memorandum for the record dated 4 September 2002, copies of which are attached. They also considered your rebuttal letter dated 16 August 2002.

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.

The Board found the incident documented in the contested entry was a proper subject for such an entry. They found your having signed the entry on 26 February 1996, over a month after the date of the entry, did not establish the entry was submitted, as you allege, because the commanding officer (CO) was unhappy with the HQMC decision as to how your military occupational specialty (MOS) was to be changed. They noted the change of your MOS was not a punitive action, regardless of the reason for it. They found the CO had the option to document the incident in your record by means of an administrative, rather than punitive, action. Finally, they noted that the page 11 entry was dated 4 January 1996, only one day after the date of your nonpunitive letter of caution. This suggests that the CO considered

both the entry and the nonpunitive letter to be appropriate responses to the incident they address, and that he did not view the entry as a negation of the letter.

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  
HEADQUARTERS UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:  
1070  
MIFD  
11 JUL 2002

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

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

1. Captain [REDACTED]'s application with supporting documents has been reviewed concerning his request for removal of the Administrative Remarks (1070) NAVMC 118(11) page 11 entry dated 960104 from his service records.

2. MCO P1070.12H, Marine Corps Individual Records Administration Manual (IRAM), authorizes commanders to make Officer's Qualification Record (OQR) entries on page 11 that are essential to document an event in a Marine's career for which no other means or method of recording exists elsewhere in the OQR or the Marine's automated record, and which will be useful to future commanders.

3. MCO 1610.12, the U.S. Marine Corps Counseling Program states that:

a. "Counseling is that part of leadership which ensures, by mutual understanding, that the efforts of leaders and their Marines are continuously directed toward increased unit readiness and effective individual performance.

b. Increase individual performance and productivity through counseling and thereby increases unit readiness and effectiveness.

c. Counseling enhances the leader's ability to improve the junior's performance."

4. One of the many leadership tools that a commander has at their disposal is counseling and rehabilitation for their Marines. Marine Corps policy is that reasonable efforts at rehabilitation should be made prior to initiation of separation proceedings and that the commander is authorized to document those efforts by a page 11 counseling entry per the IRAM. The Marine Corps Separation Manual (MCO P1900.16), paragraph 6105, sets forth policy pertaining to counseling and rehabilitation.

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[REDACTED] USMC

5. The following comments/opinions concerning the page 11 entry dated 960104 are provided:

a. The counseling entry does meet the elements of a proper page 11 counseling in that it lists deficiencies, a brief recommendation for corrective action, available assistance, and states that Captain [REDACTED] was provided the opportunity to make a rebuttal statement. Additionally, the entry affords him an opportunity to annotate whether or not he chose to make such a statement and if made, a copy of the statement would be filed in the Officer's Qualification Record (OQR).

b. Captain [REDACTED] acknowledged the counseling entry by his signature and indicated his desire "to" make a statement in rebuttal that is included in his application.

c. Captain [REDACTED] claims that the page 11 is erroneous and unjust due to the "last minute attempt to stifle any possibility of a career in the Marine Corps" is not supported by documented evidence enclosed in his application. Specifically, in his undated rebuttal statement, Captain [REDACTED] admits that he exercised poor judgement on the night of December 15, that he confessed to his class advisor and states that he had learned a valuable lesson and gained a great perspective on the importance of acting responsibly and maturely at all times, which is the basis for the page 11 counseling entry.

d. Captain [REDACTED] claims that the page 11 is erroneous and unjust due to double jeopardy by his receipt of a nonpunitive letter of caution for the same incident is not supported by the Manual of the Judge Advocate General (JAGMAN), JAGINST 5800.7C. Paragraph 0105b of the JAGMAN specifically states that a nonpunitive letter is not considered punishment; rather, the letter is issued to remedy a noted deficiency in conduct or performance of duty and the contents are not limited. The nonpunitive letter will be kept a personal matter between the member and the superior issuing the letter. Accordingly, the page 11 entry is administrative in nature and therefore not considered as punishment.

e. Captain [REDACTED] claims that the page 11 is erroneous and unjust due to being poorly prepared and unprofessional by containing administrative errors is irrelevant. The event, counseling, did occur and his signature following the entry acknowledges that fact.

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[REDACTED] USMC

f. Captain [REDACTED] does not refute the contents of the page 11 entry.

g. Captain [REDACTED] commander utilized all available leadership tools as stated in paragraph 3 and 4 above, and followed proper procedures authorized by the IRAM in documenting those actions in a page 11 counseling entry.

6. Captain [REDACTED] cites numerous administrative errors in the page 11 entry, however, these errors will not negate the entry. The IRAM authorizes a pen change method of correction that his administrative center can effect to correct these errors.

7. In view of the above, it is recommended that:

a. The Board for Correction of Naval Records disapprove Captain [REDACTED] request for removal of the Administrative Remarks (1070) NAVMC 118(11) page 11 entry dated 960104 from his service records.

b. The Board for Correction of Naval Records note that those administrative errors cited by Captain [REDACTED] be corrected by the pen change method of correction per the IRAM.

c. If the Board for Correction of Naval Records finds that Captain [REDACTED] records are in error or an injustice was committed, approve the removal of the Administrative Remarks (1070) NAVMC 118(11) page 11 entry dated 960104 from his service records.

8. Point of contact is [REDACTED]

[REDACTED]  
Head, Manpower Information  
Systems Field Support Branch,  
Manpower Management Information  
Systems Division

4/6/96-02

DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR)  
PERFORMANCE SECTION  
2 NAVY ANNEX, SUITE 2432  
WASHINGTON, DC 20370-5100  
TELEPHONE: (703) 614-2293 OR DSN 224-2293  
FACSIMILE: (703) 614-9857 OR DSN 224-9857

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MEMORANDUM FOR THE RECORD

DATE: 4SEP02

DOCKET NO. [REDACTED]

PETITIONER (PET) [REDACTED], III, USMC

PARTY CALLED [REDACTED]

TELEPHONE # [REDACTED]

WHAT I SAID: I ASK [REDACTED] WHY THEY REMOVED PET'S CONTESTED  
FITREP FOR 29AUG95-11MAR96.

WHAT PARTY SAID: DAHRIE INFORMED ME THAT THE REASON THE PERB  
REMOVED THE FITREP AT ISSUE WAS BECAUSE IT WAS AN ADVERSE FITREP  
WHICH PET DID NOT HAVE THE OPPORTUNITY TO REBUT.

[REDACTED]