



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

BJG
Docket No: 2587-98
28 April 1999

[REDACTED]

Dear Ma [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 28 April 1999. 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 19 January 1999, a copy of which is attached. They also considered your counsel's rebuttal letter dated 18 March 1999.

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. They were unable to find that your mental condition was such that you could not form the specific intent to deceive, which was required for you to be found guilty of the offenses charged. They agreed with the advisory opinion that your letter of reprimand included adequate information. Further, they noted that when you received the letter, you were afforded the opportunity to submit a rebuttal statement in which you could raise whatever matters in mitigation you believed the letter should have included. 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

Enclosure

Copy to:
Richard D. Dvorak, Esq.



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

IN REPLY REFER TO:

1070
 JAM3
 19 JAN 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
 NAVAL RECORDS

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
 IN THE CASE OF MAJOR [REDACTED]
 U.S. MARINE CORPS RESERVE

Ref: (a) Article 15, UCMJ
 (b) JAGINST 5800.7C (JAGMAN)

1. We are asked to provide an opinion regarding Petitioner's application for removal of her punitive letter of censure of 6 August 1996.

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

3. Background

a. Petitioner accepted nonjudicial punishment (NJP) on 6 August 1996 for violation of Articles 107 and 133, UCMJ, for making numerous false assertions that she had successfully taken a required physical fitness test (PFT). Petitioner was awarded a punitive letter of censure under reference (a). She appealed the NJP as both unjust and disproportionate, and the appeal was denied.

b. The NJP authority permitted Petitioner to be represented by counsel at the proceeding. That counsel was permitted to question witnesses and to present argument. The NJP authority also ordered preparation of a verbatim transcript, as requested by counsel, for Petitioner to use in preparing her appeal.

c. Petitioner maintained at her NJP that she was not guilty of the offenses because she suffered from Post-Traumatic Stress Disorder caused by both childhood paternal sexual abuse and rape as a young woman. As a result, when subjected to the stress of having to report the score for a PFT she had not taken, she entered a disassociative state in which she was unable to form the specific intent to deceive that is a required element of the offenses. Although she had previously admitted in a sworn written statement, as well as in an oral statement to Colonel [REDACTED], that she knowingly made the false statements because she was afraid she would fail the running portion of the test, Petitioner stated at her NJP proceeding that she did not know why

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
IN THE CASE OF MAJOR [REDACTED]
U.S. MARINE CORPS RESERVE

b. The standard of proof at NJP is whether the offenses are proven by a preponderance of the evidence, not, as maintained by Petitioner, whether there was proof beyond a reasonable doubt. There is no legal foundation for Petitioner's argument that a subsequent Board of Inquiry's findings of non-substantiation dramatically undermine the NJP authority's findings because he was bound to apply a higher standard of proof than that Board. The same standard of proof applied at both proceedings. With that understood, the fact that a majority of members at a subsequent Board of Inquiry reached a different result than the NJP authority in no way impeaches the findings of the NJP authority at a proceeding where he alone was the fact-finder. He applied the correct standard of proof, and his findings are supported by the evidence, which included Petitioner's signed and sworn confession. Moreover, the NJP authority gave Petitioner more procedural rights than she was entitled to, and nothing indicates that he abused his discretion in any way.

c. Petitioner's mitigating evidence does not make the punishment improper. The punishment imposed is within the authority of the officer who imposed it and is not disproportionate to offenses which involved repeated instances of self-serving official mendacity by a Marine officer. NJP authorities are required to exercise their personal discretion in determining the kind and amount of punishment to impose. The NJP authority in Petitioner's case gave full consideration to all mitigating evidence she presented, specifically noting during the proceeding that the punishment would have been much more onerous but for that evidence.

d. Petitioner is entitled to no relief based on her argument that the offenses were unfairly multiplied. The NJP authority specifically noted in his endorsement to Petitioner's appeal of the NJP that the number of offenses had no effect on the punishment imposed. Any issue of multiplicity is therefore moot.

e. The punitive letter of censure is not inadequate, and comports fully with applicable content requirements. Paragraph 0114f. of reference (b) does not require summarization of defense evidence nor recitation of defense argument presented during the NJP proceeding. A description of the misconduct committed is required, not a reiteration of the defense case. The letter of censure in Petitioner's case states the relevant facts of her misconduct accurately and succinctly.

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
IN THE CASE OF MAJOR [REDACTED]
U.S. MARINE CORPS RESERVE

f. Petitioner provides no basis for the requested relief.

5. Conclusion. Accordingly, for the reasons set forth above, we recommend the requested relief be denied.

[REDACTED]
Head, Military Law Branch
Judge Advocate Division