



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 7510-97

24 May 1999

[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 19 May 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, applicable statutes, and regulations and policies. In addition, the Board considered the advisory opinion furnished by the Military Law Branch, Headquarters Marine Corps, dated 22 March 1999, 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.

The Board was unsuccessful in obtaining your Marine Corps record and could review only those documents which you provided with your application for review. The Army was contacted to see if your Marine Corps records had been filed with your Army records, but they were not. However, an incomplete medical record was provided. It contained three DD Forms 214, two for your Marine Corps enlisted service and the third showing that you resigned and were honorably discharged from the Marine Corps as a first lieutenant (O-2) on 15 May 1969.

The Board conducted a careful review of the documentation you provided for any factors which might warrant removing the nonjudicial punishment (NJP) of 11 December 1969 and reinstating your promotion to captain. However, no such justification

could be found. In this connection, the Board substantially concurred with the comments contained in the advisory opinion. The Board was disturbed by the fact that the DD Form 214 you provided with your application was inconsistent with the one on file in your medical record. The DD Form 214 you provide showed that you were discharged from the Marine Corps as a captain rather than a first lieutenant. The DD Form 214 was clearly altered. Captain was abbreviated as "CPT", which is an Army abbreviation. The Marine Corps abbreviates captain as "CAPT." Further, the type font for the rank in block 5a and the date of rank in block 6 is different from that contained on the rest of the form.

The Board found that your numerous allegations and arguments regarding the two investigations which led to your NJP were without merit since the Board has no way of verifying the veracity of your allegations 30 years after the NJP. You had ample opportunity at the time to address your allegations and arguments in an appeal of the NJP, or certainly when removal of your name from the promotion list was proposed. The Board also noted your rebuttal to the advisory opinion. Your contentions that you were not present at the NJP hearing is unsupported by any corroborating evidence. The documentation submitted in support of your application clearly indicates that you were advised of your rights and the nature of the offenses against you, but you declined an opportunity to submit matters in your defense. The Board concluded that the documentation you provided contained sufficient evidence to support the imposition of NJP. The Board is reluctant to substitute its judgment at this late date for that of the NJP authority who was on the scene and privy to all the available evidence. Absent evidence of abuse of discretion by the commanding general to impose NJP, the Board concluded the NJP was proper and there was no basis for disturbing it. Absent removal of the NJP, there is no basis for recommending to the Secretary of the Navy that your promotion to captain be reinstated. Since you were never promoted to captain, the highest grade you satisfactorily held was first lieutenant. Any subsequent request for retirement at the highest grade satisfactorily held should be addressed to the Army Board for Correction of Military Records since you retired from the Army.

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  
JAM3  
22 MAR 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 [REDACTED]

1. We are asked to provide an opinion regarding Petitioner's request to remove from his records a nonjudicial punishment awarded 11 December 1969, and his request to be promoted to grade of captain.

2. From the available records, we conclude that Petitioner's nonjudicial punishment was neither in error nor unjust and should not be removed from his official records. We conclude that the Secretary of the Navy appropriately exercised his discretion to remove Petitioner from a promotion list for the grade of captain.

3. Background

a. Following a 13 month combat tour in the Republic of South Vietnam, Petitioner was assigned to Marine Corps Recruit Depot Parris Island, South Carolina, in March 1968. On 13 November 1968, Petitioner was alleged to have shoved a recruit in violation of recruit training regulations. On 15 November 1968, Petitioner was alleged to have physically abused his spouse by striking her on the back and buttocks with his open hand. On 16 November 1968, Petitioner was alleged to have falsified scores for rifle qualifications. On 11 December 1968, the Commanding General, Marine Corps Recruit Depot, Parris Island, South Carolina, imposed nonjudicial punishment on Petitioner in the form of a reprimand and forfeiture of \$250.00 pay per month for two months for Petitioner's he pushing of the recruit and falsification of rifle scores (not for Petitioner's assault of his wife). Petitioner did not appeal his nonjudicial punishment. Petitioner did file a statement to be included with the record of nonjudicial punishment.

b. On 13 December 1968, Petitioner's battalion commander recommended Petitioner be removed from a promotion list for captain based in part on Petitioner's nonjudicial punishment, and on Petitioner's alleged physical abuse of his wife. Petitioner submitted a statement arguing he should not be removed.



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

left to the sole discretion of President of United States, who delegated that authority to the Secretary of the Navy. Nothing Petitioner raises indicates the Secretary of the Navy abused his discretion in removing Petitioner from the promotion list, or that this removal was unjust. Consequently, we find no basis to reverse the Secretary of the Navy's 1969 decision to remove Petitioner from the promotion list to captain.

5. Conclusion. We conclude that Petitioner's nonjudicial punishment was neither in error nor unjust and should not be removed from his military records. We similarly conclude that the Secretary of the Navy's removal of Petitioner from a selection list to captain was neither in error nor unjust. Accordingly, we recommend relief be denied.

*M. W. Fisher, Jr.*

M. W. FISHER, JR.  
Head, Military Law Branch  
Judge Advocate Division