



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

CRS
Docket No: 71-99
8 September 1999

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 3 August 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 21 April 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. 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
21 APR 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]
[REDACTED] U.S. MARINE CORPS

Ref: (a) Manual for Courts-Martial, United States (1995
ed.)

1. We are asked to provide an opinion regarding Petitioner's request that his nonjudicial punishment (NJP) of 6 August 1998, be set aside and removed from his official records.

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

3. Background

a. Petitioner received NJP on 6 August 1998, for violating Articles 89 (Disrespect toward a superior commissioned officer) and 91 (Insubordinate conduct toward a noncommissioned officer), Uniform Code of Military Justice (UCMJ). Petitioner initially refused NJP on 13 May 1998, and the offenses were thereafter referred to a special court-martial. On 16 July 1998, the convening authority dismissed the charges pursuant to a pretrial agreement in which Petitioner agreed to plead guilty to the charges at NJP. Petitioner pled guilty at the NJP hearing and received punishment in the form of forfeitures of \$716.00 pay per month for 2 months (\$716.00 was suspended for a period of 6 months), and 60 days restriction. Petitioner was advised of his right to appeal the NJP on 6 August 1998, and chose not to appeal the findings or punishment imposed by the NJP authority.

b. Petitioner now asserts that the NJP should be set aside because, on 1 May 1998, his staff noncommissioned officer-in-charge, [REDACTED] U.S. Marine Corps, violated Petitioner's "constitutional rights" by entering Petitioner's bedroom, located in his off-base apartment, without permission from Petitioner or the civilian landlord. Petitioner's arguments are irrelevant and meritless, and Petitioner provides insufficient evidence to show a violation of his rights, constitutional or otherwise.

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

4. Analysis

a. Under reference (a), the NJP authority may impose punishment when he believes the preponderance of the evidence establishes the accused committed the offenses charged. Absent clear evidence of an abuse of discretion, the NJP authority's findings should remain undisturbed. Petitioner provides no evidence to indicate the NJP authority abused his discretion in any way, and the punishment imposed was within legal limits.

b. [REDACTED] inspected Petitioner's off-base apartment at the request of [REDACTED], Petitioner's civilian roommate, who complained that Petitioner was not assisting in the upkeep of the residence. [REDACTED] also inspected Petitioner's individual bedroom, apparently without the permission of Petitioner or the landlord, and found the conditions to be particularly unsatisfactory due to poor cleanliness and hygiene. Based in part upon Gunnery [REDACTED] subsequent report to the command, Petitioner's privilege of living off-base was revoked and he was ordered to move into the barracks.

c. Upon learning that he was ordered to move into the barracks, Petitioner met personally with [REDACTED] and spoke on the telephone with [REDACTED] [REDACTED]d, U.S. Marine Corps. Petitioner was disrespectful in language and deportment during these conversations. Petitioner was not punished for having a messy bedroom. Rather, he was punished, pursuant to his guilty pleas, for disrespectful behavior toward Marines superior in grade to him. Accordingly, we find that Petitioner's unsubstantiated claims that his "constitutional rights" were violated by [REDACTED] [REDACTED] inspection of his off-base residence have no bearing on the NJP authority's decision to impose punishment.

5. Recommendation. For the reasons set forth above, we recommend the requested relief be denied.

M. W. Fisher, Jr.

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