



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 6966-98

15 April 1999

[REDACTED]

Dear [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 13 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 letter from the commanding officer dated 20 October 1998 and the advisory opinion furnished by Headquarters Marine Corps dated 30 November 1998, copies of both letters are enclosed.

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

Enclosures



UNITED STATES MARINE CORPS  
MARINE CORPS DETACHMENT  
291 FLIGHTLINE AVE  
SAN ANGELO, TX 76908-3213

1000  
MCD  
20 Oct 98

From: Commanding Officer, Marine Corps Detachment, Goodfellow Air Force Base, San Angelo

To: Chairman, Board of Correction of Naval Records

Subj: REQUEST FOR NONJUDICIAL PUNISHMENT DOCUMENTATION IN THE CASE OF [REDACTED]

- Encl:
- (1) Ltr from Chairman, Board of Correction of Naval Records dtd 13 Oct 98
  - (2) San Angelo Police Report dtd 7 Feb 98
  - (3) 17th Security Forces DD Form 1569 (Incident/Complaint Report) dtd 7 Feb 98
  - (4) Commanding Officer ltr to Tom Green County Prosecutor dtd 25 Feb 98
  - (5) Charge Sheet
  - (6) Accused's Notification and Election of Rights
  - (7) Office Hours Guide
  - (8) Summary Transcript Non Judicial Punishment (NJP) Proceeding of 12 Mar 98
  - (9) Page 11 Entry for Alcohol Related Incident dtd 26 Nov 97
  - (10) Accused's Acknowledgement of Appeal Rights
  - (11) Marine Corps Detachment Special Order 17-98
  - (12) Restriction Orders and Restriction Log dtd 12 Mar 98
  - (13) NAVMAC Form 5812 LCpl Haig's Unit Punishment Book Page
  - (14) Proficiency and Conduct Marks

1. As requested in enclosure (1), the following records and supporting documentation are submitted for your review.

2. Enclosure (2) documents that [REDACTED] was involved in a hit-and-run motor vehicle accident on 7 February 98. In the course of investigating the accident, the San Angelo police officer detected an alcohol odor coming from [REDACTED]. The officer had [REDACTED] perform a field sobriety test, which he failed. He was taken into custody and consented to a breath test with a result of 0.176 + 0.173. The Driving while Intoxicated (DWI) Blood Alcohol limit in the state of Texas is 0.100%. [REDACTED] was booked into jail.

3. Enclosure (3) is formal notification from the 17th Training Wing, Security Forces via DD Form 1569 (Incident/Complaint Report) of LCpl Haig's arrest for DWI.

4. Enclosure (4) is a copy of the letter I sent to the Tom Green County Prosecutor, requesting jurisdiction over the case involving [REDACTED]. I coordinated this through the Goodfellow Air Force Base Judge Advocate General. We negotiated with the prosecutor to defer adjudication so that [REDACTED] could receive the punishment he deserved for his lack of judgement and poor





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

IN REPLY REFER TO:

1070

JAM4

30 NOV 1998

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]

Ref: (a) Manual for Courts-Martial, United States (1995  
Edition), Part V  
(b) Capt Burkemper's ltr 1000 MCD of 20 Oct 98

1. We are asked to provide an opinion regarding Petitioner's request that his nonjudicial punishment (NJP) of 12 March 1998 be set aside.
2. We recommend that relief be denied. Our analysis follows.
3. 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. On 12 March 1998, Petitioner received NJP for driving while intoxicated and drunk and disorderly conduct in violation of Articles 111 and 134, Uniform Code of Military Justice, respectively. According to reference (b), a letter from the officer who imposed the punishment, Petitioner offered "no defense of his actions or rebuttal of the charges." Petitioner was subsequently advised of his appellate rights and chose not to appeal the NJP.
4. Petitioner argues that the NJP should be set aside because a civilian prosecutor dismissed the charges against him arising from this incident, and because the incident occurred off-base. Petitioner's arguments are without merit. In fact, according to reference (b), the civilian prosecutor only dismissed the charges when he was assured that Petitioner would be subject to possible administrative or disciplinary action by his command. Moreover, Petitioner's command negotiated the dismissal of the civilian charges with the civilian prosecutor so that Petitioner would "not have his permanent driving record and long term insurability severely damaged."

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

5. Petitioner has failed to demonstrate that the NJP authority abused his discretion in any way, nor has Petitioner submitted any evidence of error or injustice. Accordingly, I recommend that relief be denied.

*M. W. Fisher, Jr.*

M. W. FISHER, JR.  
Lieutenant Colonel  
U.S. Marine Corps  
Head, Military Law Branch  
Judge Advocate Division