



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

CRS
Docket No: 2770-98
13 September 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 18 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 letter of 24 June 1998 from the Commander of the Fourth Marine Corps District and the advisory opinion of 29 October 1998 furnished by the Assistant Staff Judge Advocate for Military Law, Headquarters Marine Corps, copies of which are attached. The Board also considered your rebuttal statement of 30 November 1998.

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 Commander's letter and the advisory opinion.

Concerning your request for a change in your RE-4 reenlistment code, the Board also concluded that the disciplinary action was sufficient to support the assignment of the RE-4 reenlistment code. It means that you may not reenlist in the Marine Corps without prior approval of the Commandant of the Marine Corps. The Board thus concluded that there is no error or injustice in your reenlistment code.

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
4TH MARINE CORPS DISTRICT
BLDG 54, SUITE 3, BOX 806
NEW CUMBERLAND, PENNSYLVANIA 17070-0806

IN REPLY REFER TO:
5800
ADJ
24 JUN 1998

From: Commanding Officer
To: Chairman, Board of Naval Records, 2 Navy Annex,
Washington, DC

Subj: VACATION ACTION DOCUMENTATION IN THE CASE OF [REDACTED]

Ref: (a) Chairman, BCNR ltr AEG:jdh Docket No: 2770-98 dtd
30 Apr 98
(b) MCM, Part V, Par 6a(5)

Encl: (1) PTA in the case of US v. [REDACTED]
(2) Copy of UPB in the case of [REDACTED]
(3) Copy of page 12 on [REDACTED]

1. Per reference (a), a request was made for documentation pertaining to the vacation of a suspension of punishment in the case of subject named Marine. [REDACTED] signed enclosure (1) to plead guilty at nonjudicial punishment instead of having his case adjudicated at a Special Court-Martial. To that effect, [REDACTED] was given nonjudicial punishment on 7 March 1997. His pleas of guilty was accepted and he was found guilty of all charges. The punishment awarded was a reduction to paygrade E-4 and forfeitures of \$400.00 pay per month for a period of 2 months. The reduction to paygrade E-4 and forfeitures of \$200.00 pay per month for 2 months was suspended for a period of 6 months.

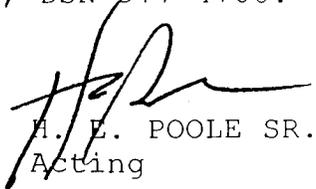
2. On 27 March 1997, Corporal McKinnon violated Article 86 of the Uniform Code of Military Justice, failure to be at appointed place of duty at the time prescribed. [REDACTED] was the vacation authority during that time and he was present at [REDACTED] command during this offense. A hearing was not held by [REDACTED] but [REDACTED] was personally notified by [REDACTED] of his intent to vacate the suspended portion of his sentence. The vacation was entered into the subject named Marines Service Record Book on 27 March 1997 and was run on Unit Diary number 00065 on 31 March 1997, enclosure (3) germane.

JUN 23 1998

Subj: VACATION ACTION DOCUMENTATION IN THE CASE OF [REDACTED]

3. Pursuant to reference (b), the servicemember ordinarily shall be notified and afforded an opportunity to appear before the officer authorized to vacate his suspension. Also, to be given the opportunity to present any matters in defense, extenuation, and mitigation of the violation on which the vacation action is to be based. [REDACTED] had an opportunity to address these matters to Colonel Forr. Furthermore, reference (b) does not require that this notification be made in writing. Consequently, no statements were taken nor were any documents maintained.

4. Point of contact at this headquarters is [REDACTED] at (717) 770-4524, DSN 977-4524 or Sergeant [REDACTED] at (717) 770-4700, DSN 977-4700.


H. E. POOLE SR.
Acting

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Files



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

IN REPLY REFER TO:

1070
JAM4
29 OCT 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]
367 74 7662/1371 U.S. MARINE CORPS

Ref: (a) Part V, Manual for Courts-Martial, United States (1995
edition)

1. We are asked to provide an opinion regarding Petitioner's request that his 7 March 1997 nonjudicial punishment (NJP) in the form of reduction to E-4 be set aside.
2. We recommend that relief be denied. Our analysis follows.
3. Petitioner was charged with wrongfully effecting the enlistment of an ineligible recruit, failing to properly report previous charges against the recruit as it was his duty to do, and paying another Marine \$175.00 to cover up negative information about the recruit. These charges were dismissed from a special court-martial and, pursuant to a pretrial agreement, Petitioner pled guilty to these charges at a NJP hearing. Petitioner received the following punishment: reduction to E-4 and forfeitures of \$400.00 pay per month for 4 months (the reduction to E-4 and forfeitures of \$200.00 pay per month for 2 months were suspended for a period of 6 months).
4. On 27 March 1997, Petitioner allegedly failed to go to his appointed place of duty in violation of Article 86, Uniform Code of Military Justice. Since this offense was within the 6 month period of suspension, the NJP authority vacated the suspended portion of the NJP. Petitioner argues that, since he was not charged with any offense and was not provided an opportunity to respond, the vacation of the suspended punishment should be set aside.
5. The reference states that prior to vacation of suspended NJP, the Petitioner ordinarily shall be provided notice and an opportunity to respond. The Commanding Officer, 4th Marine Corps District, in a 24 June 1998 letter to BCNR, states that Petitioner was provided notice and an opportunity to be heard.

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

6. Accordingly, we find that Petitioner's argument lacks merit and we recommend that the requested relief be denied.

M. W. Fisher, Jr.

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