



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

TRG
Docket No: 3051-99
23 February 2001

[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 21 February 2001. 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, a copy of which is 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, it is clear from the record that you fraternized with an enlisted member and made at least one false official statement concerning this matter. Therefore, the Board believed that there was no abuse of discretion in the decision to process you for separation from the Marine Corps and to direct your discharge. In this regard, the Board gave careful consideration to your otherwise exemplary record, but could not conclude that this record made your discharge inappropriate. Therefore, 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
JAM2
06 OCT 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 FORMER [REDACTED]
[REDACTED] U.S. MARINE CORPS

1. We are asked to provide an opinion on Petitioner's request for reinstatement. We note at the outset that BCNR documentation incorrectly records Petitioner's SSN as [REDACTED] vice [REDACTED]

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

3. Background

a. On 2 Aug 1994, Petitioner received nonjudicial punishment (NJP) for fraternizing with an enlisted female Marine by kissing her on two occasions, and for making a false official statement denying that misconduct. He was awarded forfeiture of \$500.00 pay per month for two months and a punitive letter of censure. The forfeitures were suspended for six months. Petitioner did not appeal.

b. On 1 Dec 1994, the Commanding General, Marine Corps Base, Marine Corps Combat Development Command (CG MCCDC), reported Petitioner's NJP to the Commandant of the Marine Corps (CMC). CG MCCDC also recommended that Petitioner not be required to show cause for retention in the U.S. Marine Corps. On 31 Jan 1995, however, the Deputy Chief of Staff for Manpower and Reserve Affairs (DC/S M&RA), designated by the Secretary of the Navy (SecNav) as the Show Cause Authority for the Marine Corps, directed CG MCCDC to convene a Board of Inquiry (BOI) to consider whether Petitioner should be retained on active duty in light of his misconduct. On 22 Sept 1995, a unanimous three-member BOI found by a preponderance of the evidence that Petitioner had failed to demonstrate acceptable leadership qualities, and had also demonstrated moral or professional dereliction by engaging in the misconduct for which he had received NJP. The BOI then recommended, again unanimously, that Petitioner be separated with an Honorable characterization of service.

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

discussion that occurred during the BOI about why DC/S M&RA directed the BOI notwithstanding CG MCCDC's recommendation to the contrary. (R. at 18-22). Viewed in its entirety, however, the discussion suggests only that the Senior Member of the BOI was curious about whether that recommendation affected the jurisdiction of the BOI. That question was resolved to the apparent satisfaction of the BOI when Petitioner's counsel conceded the BOI's authority to hear Petitioner's case. (R. at 22). Moreover, even if interpreted as argued by Petitioner, the noted discussion would not raise the issue. In order to establish unlawful command influence over a BOI, Petitioner would have to show a command relationship between the officer purportedly exercising the influence and the BOI, an improper influence based on that relationship, and a nexus between the alleged influence and the unfavorable action. Milas, LEXIS 14 at *24. Petitioner fails on all three counts. First, DC/S M&RA is not in the chain of command of any of the BOI members. Second, Petitioner offers no evidence that DC/S M&RA attempted to interfere in any way with the BOI's consideration of his case. Finally, Petitioner offers no evidence of a nexus between the supposed influence and the BOI's result. His claim of prejudice is based only on speculation, and absent indications to the contrary, the proceedings of the BOI are entitled to a presumption of regularity. Put another way, Petitioner's unsupported speculation does not provide a basis for questioning the good faith of the BOI members.

5. Conclusion. Accordingly, for the reasons noted, we recommend that the requested relief be denied.

[REDACTED]
Head, Military Law Branch
Judge Advocate Division