



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

ELP
Docket No. 7468-98
27 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, 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 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

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 found that you reenlisted in the Marine Corps on 28 November 1985 for six years as a SGT (E-5). At the time of your reenlistment, you had completed more than five years of prior active service.

The record reflects that you served without incident until 19 May 1987 when you were convicted by general court-martial of violating a general order by knowingly failing to seek medical aid for recruits who were injured after being ordered to jump from the ledge of a building onto a concrete slab below. You were sentenced to reduction in rank to CPL (E-4) and confinement at hard labor for two months. The general court-martial order was authenticated by the staff judge advocate. The convening authority's name is preceded by "/s/" indicating the original was signed by the convening authority.

After to your conviction, you continued to serve without further incident, were meritoriously advanced to SGT by the Commandant of

the Marine Corps (CMC), and were awarded the Navy Achievement Medal for professional achievement while serving as a ground support equipment manager and maintenance control supervisor during the period 1-31 March 1990. You were honorably discharged on 16 February 1992. The DD Form 214 for this period of service is not on file in your record.

On 20 February 1992, you enlisted in the Marine Corps Reserve for two years. The date you went into in the Active Reserve Program is not shown in available records. However, you were promoted to SSGT (E-6) on 1 January 1993 and reenlisted on 10 March 1995 for four years. Your performance of duty since February 1992 has been consistently rated as outstanding and you have been awarded the Navy Commendation Medal and two Navy Achievement Medals.

The Judge Advocate General Manual, Rules for Courts-Martial (RCM) 1114(f), states that court-martial promulgating orders shall be authenticated by the signature of the convening authority or other competent authority acting on the case, or a person acting under the direction of such authority. A promulgating order prepared in compliance with the rule shall be presumed authentic.

In its review of your application, the Board carefully reviewed your record for any mitigating factors which might warrant removing the general court-martial from your record and restoring you to your original date of rank of SGT. However, no justification for such relief could be found. In this regard, the Board noted your contention to the effect that the general court-martial is nullified because the convening authority's signature does not appear on the general court-martial order that promulgated the findings and sentence, and the convening authority's action. You assert the court-martial order indicates that the staff judge advocate improperly approved the findings and the sentence by direction.

The Board is prohibited by law from reviewing the findings of a court-martial and is restricted to reviewing the sentence to determine if it should be reduced as a matter of clemency. Accordingly, although the authentication of the contested promulgating order appears to be proper and in accordance with RCM 1114(f), your contention is evidentiary and cannot be considered by the Board.

The Board particularly noted that after your conviction your superior performance was recognized by a meritorious promotion to SGT and award of the Navy Achievement Medal. Your continued stellar performance in the Active Reserve has also been recognized with the award of two more Navy Achievement Medals and the Navy Commendation Medal. The Board further noted your

involvement with the White House in the Marine Corps "Toys for Tots Program" was recognized in a Reader's Digest article.

While your achievements since your conviction are commendable, they do not erase the lapse of judgment for which you were convicted. Unless the conviction is set aside by appellate authority, the Board has no authority to remove the conviction from your record. The Board noted that you were convicted of a serious breach of responsibility, however, you received a relatively light sentence to confinement and reduction in rank. The Board believed that the sentence was fair, and far less than you could have received. It appeared to the Board that because of your otherwise outstanding performance of duty you received extraordinary consideration when you were allowed to complete your enlistment without further administrative action. The Board was not persuaded that your subsequent achievements warrant changing the sentence by setting aside the reduction and restoring you to your original date of rank of SGT. The Board thus concluded that the sentence was appropriate and no clemency is warranted. 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