



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

BJG
Docket No: 8332-98
29 April 1999

SSGT [REDACTED] USMC
[REDACTED]
[REDACTED]

Dear Staff Sergeant [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.

Since you are still on active duty and have not been assigned a reenlistment code, your request to change it was not considered.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 28 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 advisory opinion from the Headquarters Marine Corps (HQMC) Military Law Branch, Judge Advocate Division (JAM4), dated 28 October 1998, the report of the HQMC Performance Evaluation Review Board (PERB) in your case, dated 30 November 1998, and a memorandum for the record dated 25 March 1999, copies of which are attached. They also considered the evidence considered at your nonjudicial punishment (NJP) proceedings, and your counsel's undated rebuttal letter.

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 substantially concurred with the comments contained in the advisory opinion dated 28 October 1998 in finding that your contested NJP should stand. They noted that you did sign an advisement of rights form, so they did not consider it clear that your right against self-incrimination was violated. They observed that the military judge in your court-martial did not expressly find such a violation, rather, he granted the motion to suppress the use of your statement as evidence at your court-martial. In any event, they concluded that the

witness statement considered in your case would have provided compelling evidence of your guilt, even if your own statement had not been considered.

The Board substantially concurred with the report of the PERB dated 30 November 1998 in finding that your contested adverse fitness report should not be removed.

Since the Board found insufficient basis to remove your contested NJP or adverse fitness report, they had no grounds to restore your drill instructor MOS (military occupational specialty).

In view of the above, 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