



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

BJG
Docket No: 8387-97
17 December 1999

MA [REDACTED] USMCR
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Dear Major [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. Your previous case, docket number [REDACTED] was denied on 19 June 1996. By order of 29 October 1997, the United States District Court for the District of Columbia, Case Number [REDACTED] remanded the case to the Board for Correction of Naval Records for reconsideration with the following directions:

1. Consider the following evidence:

a. Your declaration dated 1 September 1997 that a counselor at the Headquarters Marine Corps (HQMC) Officer Career Counseling and Evaluation Section, Officer Assignment Branch, Personnel Management Division (MMOA-4) informed you that your now removed fitness report for 15 July to 21 November 1994 materially contributed to your failure by the Fiscal Year (FY) 1996 Major Selection Board.

b. The fact that the MMOA-4 advisory opinion dated 29 November 1995 did not compare your record with a sampling of records of your peers from the FY 1996 Major Selection Board.

c. The fact you were selected by the FY 1998 Reserve Major Selection Board.

2. Apply the standard of review requiring a finding as to "whether it was definitely unlikely that [you] would have been selected for promotion to Major at the FY[19]96 Major Selection Board with the fitness report removed from [your] record."

3. Report the Board's opinions and recommendations to the Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)).

In your previous case, you requested removal of your failures by the FY 1996 and 1997 Major Selection Boards, and remedial consideration for promotion. The memorandum for the record (MFR) dated 1 November 1999, a copy of which is attached, reflects that you now also request restoration to active duty. By reason of your failures of selection for promotion, you were involuntarily discharged from the Regular Marine Corps on 1 January 1997.

A three-member panel of the Board, sitting in executive session, reconsidered your case on 8 December 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 the court's order, the Board's file on your prior case, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion from the HQMC MMOA-4, dated 25 November 1997, a copy of which is attached. They also considered the MFR dated 1 November 1999, cited above, and the MFR dated 6 December 1999, a copy of which is attached. Finally, they considered your declaration dated 1 September 1997 and the Master Brief Sheets of six officers who were considered by the FY 1996 Major Selection Board (three selectees and three who were not selectees).

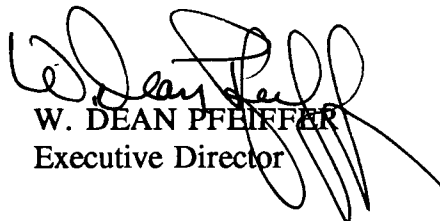
After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion in finding that your failure by the FY 1996 Major Selection Board should stand. They found it "definitely unlikely" that you would have been selected by that promotion board with a corrected record. They found it probable that the fitness report in question was not in your record considered by the FY 1997 Major Selection Board, noting the MFR dated 6 December 1999. Further, even if this fitness report were in your record as it was presented to that promotion board, the other matters of competitive concern cited in the advisory opinion persuaded the Board that your selection by the FY 1997 Major Selection Board would have been "definitely unlikely" with the report out of your record. Concerning your declaration, they had no doubt that the removed report materially contributed to your failure by the FY 1996 Major Selection Board. Your statement that the counselor "noted no other significant areas of weakness" did not convince them that the other matters cited in the advisory opinion were not factors in your failures of selection. Regarding your selection by the FY 1998 Reserve Major Selection Board, they took administrative notice that selection by a reserve promotion board is easier than selection by a corresponding active duty promotion board.

Since the Board found insufficient grounds to remove either of your failures of selection for promotion, they found no basis to grant you remedial consideration for promotion, set aside your discharge from the Regular Marine Corps, or reinstate you to active duty.

In view of the above, absent contrary direction from the ASN (M&RA), the previous decision of the Board to deny relief stands. 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

Copy to:

