



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

BJG
Docket No: 2866-98
20 May 1999

MR. [REDACTED]
[REDACTED]
[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.

It is noted that the Commandant of the Marine Corps (CMC) has processed your contested fitness report for 1 March 1995 to 3 March 1996 as an adverse report.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 19 May 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 report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB), dated 3 April 1998, and the advisory opinion from the HQMC Military Law Branch, Judge Advocate Division (JAM3), dated 19 January 1999, copies of which are attached. They also considered a copy of the service record book page 12 entry which documents your contested nonjudicial punishment (NJP), obtained from your former command that awarded the NJP.

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 report of the PERB and the advisory opinion from JAM3. They were unable to find that you were provided an inadequate opportunity for training in your military occupational specialty, or that your reporting officials expected you to perform as a sergeant with extensive experience in the Fleet Marine Force.

Further regarding your contested fitness report for 1 March 1995 to 3 March 1996, the Board did not find it to be inaccurate, vague, or inconsistent. They found no requirement that the narrative include specific justification for the marks assigned, none of which were adverse.

They were unable to find that the narrative was not performance oriented, that it violated "by grade" guidance, or that it omitted important information. They were unable to find that you were not counseled, noting that your third sighting officer stated that according to your reporting senior, your enlisted leaders "spent significant time" counseling you. In any event, they generally do not grant relief on the basis of an alleged absence of counseling, since counseling takes many forms, so the recipient may not recognize it as such when it is provided. Finally, they were unable to find that your reviewing officer expressed disagreement with your reporting senior as to your fitness for promotion, or that either your reviewing officer or your reporting senior commented to the effect that you accomplished "assigned tasks quietly and calmly."

In view of the above, your application for relief beyond that effected by CMC 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

Copy to:
C. Mark Baldwin, Esq.