



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

BJG
Docket No: 7889-97
19 August 1999

MR [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.

You requested removal of your fitness reports for 1 November 1992 to 1 March 1993 and 1 November 1993 to 28 February 1994, promotion to pay grade E-8 effective 1 December 1993 and to E-9, and setting aside of your general discharge of 8 March 1994.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 18 August 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 opinions furnished by the Headquarters Marine Corps (HQMC) Military Law Branch (JAM2 and 3) dated 27 August 1997, 23 February 1998, 27 January 1999, and 22 March 1999; the HQMC Performance Evaluation Review Board (PERB) dated 17 October 1997; the HQMC Separation and Retirement Branch (MMSR-6J) dated 30 December 1997 and 10 May 1999; the HQMC Promotion Branch (MMPR-2) dated 22 January 1998 and the memorandum for the record dated 17 August 1999, copies of which are attached. They also considered your counsel's rebuttal letters dated 9 March 1998 and 5 March and 14 May 1999.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish probable material error or injustice.

The Board substantially concurred with the advisory opinions dated 27 January and 10 May 1999 in finding that your discharge should stand. They were unable to find you did not illegally use drugs. The fact that a court-martial made no finding that you illegally used drugs did not convince the Board that you did not commit such misconduct.

Your leave and earnings statement at enclosure (11) to your application did not prove you were promoted to pay grade E-8. In light of the administrative separation board determination that you did illegally use drugs, the Board found that your promotion was not warranted, and that a statement from you regarding your promotion would not have made any difference.

Since the Board was unable to find that you did not illegally use drugs or that your discharge was unwarranted, they had no basis to remove the contested fitness reports.

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

Copy to:
Alice L. Cate, Esq.