



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

SMC
Docket No: 01951-00
30 June 2000

MR J [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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 29 June 2000. 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 letter on your behalf from the Commanding General (CG), I Marine Expeditionary Force, dated 6 March 2000, and the advisory opinion furnished by Headquarters Marine Corps, dated 18 April 2000, copies of which are attached.

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. Without removing your driving under the influence conviction or the action to remove you from the 1998 staff sergeant selection list, the Board was unable to find you were improperly denied reenlistment. The letter from the CG did not persuade the Board you should have been promoted or allowed to reenlist. 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

Enclosure

1951-00



UNITED STATES MARINE CORPS

I MARINE EXPEDITIONARY FORCE, FMF
BOX 555300
CAMP PENDLETON, CALIFORNIA 92055-5300

IN REPLY REFER TO:
5420
SJA

06 MAR 2000

From: Commanding General, I Marine Expeditionary Force
To: Board for Correction of Naval Records

Subj: APPLICATION FOR CORRECTION OF MILITARY RECORD ICO SERGEANT [REDACTED] MC

1. I have personally reviewed the unusual administrative process that led to Sergeant [REDACTED] selection to Staff Sergeant, revocation of promotion, subsequent failure for selection, and ultimate denial of reenlistment. I strongly recommend that relief be granted. After becoming fully aware of this saga and talking with Sergeant [REDACTED] recommended that he petition BCNR for relief. Sergeant [REDACTED] made a mistake, but so did I and my commanders. Sergeant [REDACTED] should be allowed to continue service in the Marine Corps and be promoted to Staff Sergeant.

2. Based on my review of all available records, three things are clear:

a. This case was not properly administratively handled at several stages. The combination of these failures to properly follow directives and the passage of time diminished Sergeant [REDACTED] opportunity for promotion to staff sergeant.

b. The Commandant has given clear guidance that the Marine Corps will not operate under a "zero defects mentality", yet that mentality was clearly applied in Sergeant [REDACTED] case. Prior to his DUI, Sergeant [REDACTED] career was outstanding. The 1998 Staff Sergeant Selection Board recognized this performance and selected him to Staff Sergeant. I do not condone DUI, but I do concur with the Commandant that one mistake should not terminate a career. Despite Sergeant [REDACTED] performance before and after the DUI, that one mistake terminated his career.

c. I made a mistake on On 30 April 1999 when I recommended that Sergeant [REDACTED] selection to Staff Sergeant be revoked. If I had been more fully aware of all the facts and circumstances, I would not have made that recommendation. I have reviewed Sergeant [REDACTED] records, talked to his commanders, and I have looked him in the eye. I am convinced that he should be promoted to Staff Sergeant.

3. This case demands relief. I strongly recommend that Sergeant [REDACTED] selection to Staff Sergeant be reinstated. I am not in the habit of changing my written word, and don't make this recommendation lightly. Please contact me directly if you need more information to grant the deserved relief.

[REDACTED]

(3) AD



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
MANPOWER AND RESERVE AFFAIRS DEPARTMENT
HARRY LEE HALL, 17 LEJEUNE ROAD
QUANTICO, VIRGINIA 22134-5104

1951-00

IN REPLY REFER TO:
1400/3
MMPR-2
18 Apr 00

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: ADVISORY OPINION IN THE CASE OF SERGEANT [REDACTED]
[REDACTED] SMC

Ref: (a) MCO P1400.32B, ENLPROMMAN

1. We are asked to provide an opinion regarding Sergeant [REDACTED] request for redress that would rescind the revocation of his appointment to staff sergeant. He states that he was not afforded the right to review one of the two recommendations regarding his promotion status prior to the official revocation of his promotion to staff sergeant, particularly the recommendation to withhold his appointment to staff sergeant vice the recommendation to revoke his appointment to staff sergeant. Finally, Sergeant [REDACTED] contends that two recommendations were prepared in his case, one by the company commander and the other by the CO, 13th MEU, and that he (Sergeant [REDACTED]) was not provided an opportunity to submit a statement concerning the second recommendation.

2. Regarding the first error alleged by Sergeant [REDACTED], we disagree with his contention that two recommendations were prepared. A fair reading of the letter prepared by the CO, 13th MEU, shows that it was intended to be an endorsement of the original revocation recommendation. The endorsement line that should be at the top of the letter is missing. However, the words in the first paragraph clearly indicate the intent of the letter is to '[f]orward. . .' the company commander's recommendation', the subject line is identical to the line in the original letter; the second paragraph contains a reference to material in the first endorsement to the company commander's original letter of recommendation; and the dates of the letters are sequential; i.e., the 13th MEU 'letter' was signed after the first endorsement to the company commander's letter. We believe only one recommendation was forwarded via the chain of command, and no relief should be granted based on this assignment of error.

3. Regarding the second error alleged by Sergeant [REDACTED], we agree that the Commanding Officer, I MEF Headquarters Group, submitted a recommendation that conflicted with the original recommendation to revoke. That officer recommended withholding Sergeant Pacheco's promotion instead of revoking it. Withholding is a lesser consequence; i.e., had the promotion been merely withheld, Sergeant [REDACTED] would have been promoted ultimately. Per reference (a), the conflicting recommendation should have been referred to Sergeant [REDACTED] comment before it was sent to Headquarters, U.S. Marine

Subj: ADVISORY OPINION IN THE CASE OF SERGEANT [REDACTED]
[REDACTED] USMC

Corps. However, we do not believe the outcome would have been different for Sergeant [REDACTED] had he been given an opportunity to submit a second statement, as commanders next in the chain of command (the CO, 13th MEU and the CG, I MEF, disagreed with the recommendation to withhold and recommended revocation. Though there was error, we believe the error does not justify granting relief.

4. Regarding the third error alleged by Sergeant [REDACTED] we disagree with the contention that the delay in informing Headquarters, U.S. Marine Corps about his DUI until after the selection board had adjourned resulted in his receipt of an administrative failure of selection. Rather, we believe that, had the selection board been apprised of Sergeant [REDACTED] misconduct, he likely would have failed selection anyway. The delay, in itself, did not result in his failure of selection. We recommend no relief be granted on this basis.

5. In a letter supporting Sergeant [REDACTED] petition, the CG, I MEF, recommends relief be granted. For the reasons cited above, we believe that Sergeant [REDACTED] promotion would have been revoked despite the mistake in administrative processing (forgetting to identify the letter as an endorsement) and failure to provide him an opportunity to submit an additional statement on a more favorable recommendation. Nonetheless, if the CG, I MEF, believes an injustice has occurred, he can request a reconsideration of the Commandant's decision to revoke Sergeant [REDACTED] promotion. Paragraph 4502.3 of reference (b) refers.

[REDACTED]

Head, Enlisted Promotions
Promotion Branch
By direction of
The Commandant of the Marine Corps