



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

LCC:lc
Docket No. 4908-99
17 April 2000

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Subj: [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

- Encl:
- (1) DD Form 149 w/attachments
 - (2) Ltr of 4 Nov 98 from BN Pers Off
 - (3) Ltr of 29 Oct 98 request removal from Weight Control Roster
 - (4) Ltr of 22 Apr 99 approving removal of fitness report
 - (5) Ltr of 26 Feb 99 requesting remedial Promotion consideration
 - (6) Ltr of 4 Jun 99 OLAC-5B advising Petitioner to submit to the Board

 - (7) CMC MMPR-2 memo of 13 Sep 99
 - (8) Microfiche Record

1. Pursuant to the provisions of reference (a), subject, hereinafter, referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show he was given remedial consideration for promotion to staff sergeant, paygrade E-6, for Calendar Year (CY) 98.

2. The Board, consisting of Messrs, Kastner, Pfeiffer, and Zsalman, reviewed Petitioner's allegations of error and injustice on 28 March 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and justice, finds as follows:

a. On 5 May 1998 Petitioner was erroneously assigned to the weight control program. Promotion photos dated 25 February 1998 and 25 June 1998 were submitted to the promotion board which listed his body fat in error.

b. Petitioner was initially weighed and determined to be overweight on 24 February 1998. He had no previous assignment to weight control in his 13 plus years of service. Although he weighed in February 1998, Petitioner was not officially assigned to the weight control program until May 1998.

c. Several days later after the promotion photo was submitted to the promotion board, it was discovered that Petitioner's body fat percentage was calculated incorrectly and should have been 17%, within standard, vice 19%, which exceeds standards. See enclosure (2).

d. The weight that was used by the battalion to assign him to weight control in May was a weight the company had taken in February. It computed his body fat incorrectly, and was over two months old.

e. Petitioner was not seen by medical personnel until June 1998. This was the first time he had been actually evaluated, weighed or measured by medical personnel.

f. On 29 October 1998, Petitioner requested the removal of his assignment to the Weight Control Program in the Marine Corps Total Forces System (MCTFS). Removal would allow him to be considered for promotion without documents showing he was in an overweight status. His request was approved on 19 January 1999. The erroneous weight control assignment entry was deleted from the MCTFS on 22 February 1999. See enclosure (3).

g. After the remark was removed from MCTFS on 19 February 1999 Petitioner submitted a request to expunge a fitness report from his record for the period 1 October 1997 to 20 March 1998, which commented on his being in the Weight Control Program. This report was removed from his record on 22 April 1999. See enclosure (4).

h. On 26 February 1999 Petitioner requested remedial consideration for promotion to staff sergeant based on the removal of the erroneous remark pertaining to being in the weight control program. See enclosure (5).

i. Unfortunately, due to time constraints Petitioner was discharged on 5 April 1999 and he was never afforded the opportunity to be considered for promotion with a corrected record. See enclosure (6).

j. In correspondence attached as enclosure (7), the office having cognizance over the subject matter involved in Petitioner's application, has commented to the effect that since he is not on active duty he cannot be considered for remedial consideration for promotion and recommended the request be denied.

CONCLUSION:

Upon review and consideration of all the evidence of record, notwithstanding the comments contained in enclosure (7), the Board finds the existence of an injustice warranting the requested relief. In this connection, the Board concluded since erroneous information was removed from his records that significantly harmed his chances for promotion, he is entitled to be considered for promotion on the basis of his corrected record. {NOTE: Petitioner was advised and he has submitted a signed statement acknowledging that he understands that if his request is approved and he is selected for promotion should he elect to return to active duty he must refund the severance pay received at the time he was discharged.}

Accordingly, the Board recommends the following corrective action.

RECOMMENDATION:

That Petitioner's naval record be corrected, where appropriate, to show that:

a. Petitioner be given remedial consideration for promotion to paygrade E-6 for CY 99 at the earliest possible date.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above-entitled matter.

ROBERT D. ZSALMAN
Recorder


G. L. ADAMS
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

20 June 2000


W. DEAN PFEIFFER
Executive Director