



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

LCC:lc
Docket No.6522-99
17 April 2000

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

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

Encl: (1) DD Form 149 w/attachments
(2) Ltr of 22 Jul 97 to President of FY 97 Staff Sergeant Promotion Board
(3) Request of 20 Jan 98 to expunge fitness report
(4) CMC ltr of 3 Apr 98 approving the removal of fitness report
(5) Request to extend on active duty for remedial promotion consideration and denial
(6) Ltr of Apr 98 requesting remedial promotion consideration and denial
(7) CMC MMPR-2 memo of 10 Jan 00
(8) Microfiche Records

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 (SSGT) for Calendar Years (CY) 1996 and 1997.

1. 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. Petitioner, a sergeant serving paygrade E-5, was involuntarily discharged on 21 April 1998 because he had been passed over twice for promotion. He had 12 years, 5 months, and 10 days of active duty.

b. After being passed over for promotion in 1996 Petitioner reviewed his microfiche and saw what he considered to be an erroneous fitness report for the period 6 December 1992 to 15 March 1994. He refused to sign because it contained what he considered to be false data. He immediately began investigating what could be done to correct the report.

c. In the interim he sent a letter to the President, FY 97 Staff Sergeant Promotion Board, and attempted to explain why the fitness report was in error. See enclosure (2).

d. On 20 January 1998 he submitted a request to this Board to expunge the fitness report for the period 6 December 1992 to 15 March 1994 from his record. As is normal procedure it was forwarded for review by the Marine Corps Performance Evaluation Review Board (PERB) pursuant to Marine Corps Order 1610.11A. See enclosure (3).

e. On 3 April 1998, the PERB approved Petitioner's request to remove the report for the period 6 December 1992 to 15 March 1994 from the Petitioner's record. See enclosure (4). Petitioner argues the erroneous report was the reason he was not selected for promotion.

f. Petitioner attempted to get an extension to remain on active duty so that he could receive remedial consideration for promotion. If selected for paygrade E-6 he would then be eligible to reenlist. That request was denied. See enclosure (5).

g. After his discharge on 21 April 1998 he submitted a request to CMC (MMPR-2) for remedial consideration for promotion to paygrade E-6. It was denied because he was not on active duty and he was directed to submit his request to this Board. See enclosure (6).

h. In correspondence attached as enclosure (6), the office having cognizance over the subject matter involved in Petitioner's application, has commented to the effect that he was not eligible for remedial consideration for promotion since he was not on active duty and recommended the request be denied.

CONCLUSION:

Upon review and consideration of all the evidence of record, notwithstanding the comments contained in enclosure (6), the Board finds the existence of an injustice warranting the requested relief. In this connection, the Board found that when significant data is removed from an enlisted servicemember's record he or she will receive a second look for consideration for

promotion with a corrected record. Unfortunately, due to time constraints, the report was removed on 3 April 1998 and the individual was discharged on 21 April 1998. The Board concluded that in fairness to the individual he must be considered for promotion with a clean record and if selected for promotion he could then continue his career in the Marine Corps. (NOTE: Petitioner has been advised and signed a statement acknowledging that he understands that if remedial consideration is approved, and he is selected for promotion should he elect to return to active duty he must refund the severance pay received at time of his discharge.)

Accordingly, the Board recommends the following corrective action.

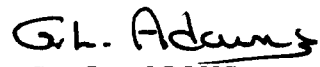
RECOMMENDATION:

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 96 and CY 97 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.

19 June 2000


W. DEAN PFEIFFER
Executive Director