



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

TRG
Docket No: 7415-00
13 April 2001

[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 10 April 2001. 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.

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.

The Board found that you reenlisted in the Marine Corps on 13 July 1988 for six years. Subsequently, you extended that enlistment on three occasions totaling about 14 months. The record shows that on 21 June 1994 you received nonjudicial punishment (NJP) for driving while intoxicated. The punishment imposed was forfeitures of pay totaling \$1,000. On 22 November 1994, the Director, Personnel Management Division, Headquarters Marine Corps (HQMC) directed that your name be removed from the 1994 GYSGT (E-7) selection list.

The fitness report for the period 2 August to 31 December 1994 is excellent and states that you had unlimited potential and were highly recommended for promotion to GYSGT. However, the fitness report for the period 1 January 1995 to 16 April 1995 contains comments to the effect that your performance had slowly declined over the past couple of months and your admitted personal problems precluded you from performing at a high level.

On 17 August 1995 HQMC denied your request for reenlistment. You

were honorably discharged on 13 September 1995 and were paid separation pay in the amount of \$33,405.35. At that time, you had completed 15 years, 1 month and 21 days of active service.

You are requesting reinstatement in the Marine Corps, promotion to GYSGT and retirement with 20 years of active service. You contend in your application that the adverse actions taken against you, including forfeitures of pay, removal from the GYSGT list and denial of reenlistment were very severe based on an isolated instance of drunk driving. You state that you are aware of others who were promoted and retained in the Marine Corps after committing similar offenses. You also claim that an injustice occurred because you did not receive a physical examination at the time of your discharge.

The Board was aware that in 1995 the Marine Corps was being very selective concerning the reenlistment of SSGT's (E-6). Further, the decision whether to allow reenlistment is a matter that falls within the discretion of the Commandant of the Marine Corps. The Board believed that the NJP, removal of your name from the promotion list and the fitness report for the period ending 16 April 1995 were sufficient to support the decision not to approve your reenlistment request. The Board concluded that there has been no abuse of discretion in your case.

The Board noted your contention that you did not receive a physical examination upon discharge. However, you have not alleged that there was some physical problem which would have been discovered. The Board noted that your physical fitness was such that you could serve on active duty in the Marine Corps. Finally, the Board noted that you must have been aware that you needed a physical and that requirement was probably an item on your checkout list. Therefore, it is clear that you had some responsibility to ensure that you received a physical prior to discharge. The Board concluded that corrective action on the physical issue was not warranted.

Accordingly, 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