



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

WMP

Docket No: 8292-01
13 December 2002

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 11 December 2002. 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, and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Enlisted Assignment Branch, Headquarters Marine Corps dated 14 February 2002, a copy of which is enclosed.

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 17 January 1997 for four years as a staff sergeant (E-6) after over 11 years of prior active service. Your record reflects that on 1 August 2000, you were advanced to gunnery sergeant (E-7).

The record further reflects that you served without incident until 8 July 2001, when you were convicted by a summary court-martial of three instances of fraud against the United States, failure to obey a lawful general order, and dereliction of duty. The punishment imposed was reduction in rank to staff sergeant.

On 31 July 2001, you requested that Headquarters Marine Corps authorize your reenlistment for a period of three years. Your request was endorsed by your commanding officer and by the Commanding Officer, Marine Corps Logistics Base, Albany, GA, and the Commander, Marine Corps Logistics Bases, Albany, GA. In your commanding officer's endorsement of 31 July 2001, he stated, in part, that:

"...Staff Sergeant has learned from her mistake and has accepted full responsibility for her actions. She is ready to move forward and is more than capable of contributing significantly to her MOS and the overall mission of the Marine Corps. Without taking away from those Marines that have served without incident, I can only recommend Staff Sergeant with confidence. However, I would like to see her be given the opportunity to reenlist and serve until retirement."

On 13 August 2001 the Commander, Marine Corps Logistics Base, Albany, GA, endorsed your request as follows:

"Staff Sergeant has served our Marine Corps well over 17 years. Her record book prior to her recent conviction is indicative of her dedication and professionalism. Unfortunately, the recent commission of offenses charged and subsequent guilty findings at a summary court-martial forces me to recommend a 1-year extension vice a full 36-month reenlistment. This will allow us to continue to monitor her progress and performance as she recovers from this mistake. I feel that she has learned a very valuable lesson and that a second chance is warranted."

In his endorsement of 27 August 2001, Commander, Marine Corps Logistics Bases stated, in part, that:

"...Due to the recent guilty findings at a summary court-martial, I recommend a 23 month extension, in conjunction with permanent change of station (PCS) orders, to allow further observation of this Marine's performance. She has garnered the support of her chain of command, as well as that of her previous Commanding General of U.S. Marine Corps Material Command."

Additionally, a letter of recommendation was forwarded with your request from the Inspector General of the Marine Corps (MCIG). In his letter, MCIG stated, in part, that:

"...This serious distraction does not afford a total summary of this Marine's true value and contributions over 16 plus years of selfless and superior service. If we were to go back over this Marine's service, we would observe her yearning for making conditions better for all Marines by constant and vigorous attention to organizational climate issues, equal opportunity and sexual harassment. Her professional efforts fostered and helped sustain a climate of fair treatment, unit cohesion, and general satisfaction at the Marine Corps Logistics Base, Albany."

On 3 October 2001, your request for reenlistment was disapproved after a thorough review by Headquarters Marine Corps because you "failed to uphold the high standards of personal and professional behavior expected of Marines, resulting in court-martial conviction."

On 13 September 2002, you received an honorable discharge due to non-retention on active duty and were assigned an RE-3C reenlistment code.

The Enlisted Assignment Branch, Headquarters Marine Corps in its advisory opinion of 14 February 2002 stated, in part, that:

"...According to Marine Corps Order P1040.31, the Enlisted Career Planning and Retention Manual, SSgt Harris does not meet the following prerequisites for reenlistment due to her summary court-martial of 8 July 2001: "must have demonstrated the core values of honor, courage, and commitment" and "must have no convictions by a court-martial on current enlisted contract."

The advisory opinion further states that:

"...SSgt states that the denial is unfair and that her years of dedication and sacrifice went unrecognized. Per section 1176, Title 10, U.S. Code, Marines with 18

years of active service will be retain to achieve retirement eligibility unless separated in accordance with the Marine Corps Separations Manual. SSgt had 17 years, 2 months, and 9 days of service."

In its review of your application the Board carefully weighed all potentially mitigating factors such as your prior honorable service and your contention that you were receiving a more severe form of punishment than the summary court-martial could have awarded and you were being denied retirement. However, the Board concluded that the denial of your request for reenlistment and ensuing RE-3C reenlistment code were appropriate due to your conviction by a summary court-martial for serious offenses that resulted in a reduction in rank. Furthermore, the Board substantially concurred with the comments set forth in the advisory opinion in that due to your conviction by the summary court-martial, you did not meet the Marine Corps requirement that you "demonstrate the core values of honor, courage, and commitment." Therefore, even though your reenlistment request was favorably endorsed by several senior officers, it was reviewed and appropriately disapproved by Headquarters Marine Corps. 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

Enclosure

