



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

CRS
Docket No: 6062-07
3 September 2008

[REDACTED]

[REDACTED]

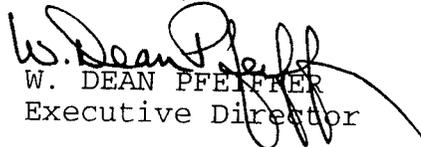
This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 September 2008. 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 advisory opinion furnished by Headquarters Marine Corps dated 14 August 2007, a copy of which is 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. 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



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3000 MARINE CORPS PENTAGON
WASHINGTON, DC 20350-3000

IN REPLY REFER TO:

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AUG 14 2007

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL RECORDS

Subj: APPLICATION FOR CORRECTION IN THE CASE OF STAFF SERGEANT
[REDACTED] USMC

Ref: (a) MCO P1400.32C, MARCORPROMMAN, VOL 2, ENLPROM

Encl: (1) CO, 2D BN, RTR, MCRD/WRR, San Diego, CA ltr 1400
S-1/LCD of 13 Sep 06

1. You requested an advisory opinion on the revocation of Staff Sergeant Valdez's (hereinafter "Applicant") appointment to the grade of Gunnery Sergeant and the removal of a charge he received at Battalion level Non-Judicial Punishment (NJP).

2. Opinion. We recommend that Applicant's request for relief be denied. Our analysis follows.

3. Background

a. On 17 August 2006, while serving as a Senior Drill Instructor, Applicant wrongfully performed incentive training on Recruits in violation of a Battalion Standard Operating Procedures (SOP).

b. On 1 September 2006, the Commanding Officer, 2d Battalion (2dBn), Recruit Training Regiment (RTR), Marine Corps Recruit Depot (MCRD), San Diego, California, imposed NJP upon Applicant for violating Article 80 of the Uniform Code of Military Justice (UCMJ) by attempting to induce another drill instructor to wrongfully speak to recruits and for two counts of disobeying a lawful written order in violation of Article 92. Applicant accepted NJP in lieu of trial by court-martial and was found guilty by his Commanding Officer. Applicant received forfeitures of \$1232.00 pay per month for a period of two months. Applicant did not appeal his NJP.

c. On 6 September 2006, the Commanding Officer, 2dBn, RTR, MCRD, San Diego, informed the Applicant that he was recommending to the Commandant of the Marine Corps that his promotion be

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[REDACTED] ISMC

revoked and that he be relieved for cause from his position as Senior Drill Instructor.

d. On 13 September 2006, Applicant's Commanding Officer submitted enclosure (1) to MMPR-2. Enclosure (1) is the detailed report and recommendation supporting revocation of Applicant's appointment. Subsequently, the Marine Corps administratively deleted Applicant's name from the FY 2006 Gunnery Sergeant Selection List.

c. On 3 May 2007, the Commandant of the Marine Corps, informed the Applicant that he was revoking his promotion to Gunnery Sergeant.

4. Analysis

a. The Marine Corps' removal of Applicant from the FY 2006 Gunnery Sergeant Selection List was in substantial compliance with applicable regulations. Paragraph 1200.4 of the reference requires Commanders to ensure that all enlisted Marines promoted to the next higher grade meet the Marine Corps standards of professionalism, personal performance, and leadership. This paragraph further directs that the certificate of appointment will not be delivered if the Marine concerned has failed to maintain the high standards of professional and personal performance that led to selection.

b. Additionally, per paragraph 5200.1 of the reference, when a Commanding Officer determines that a Marine previously selected for promotion by an HQMC SNCO selection board is now unqualified for promotion, he must immediately notify MMPR-2 that he intends to recommend delay or revocation of a Marine's certificate of appointment. Per paragraph 5200.3 of the reference, the Commanding Officer must then forward to MMPR-2, via the chain of command, a full, detailed report of the circumstances within 30 days of submitting the advance notification of intent to withhold or delete the Marine's selection. If the Commanding Officer recommends revocation of the Marine's appointment, he must submit a request for revocation via the chain of command.

c. Per paragraph 5200.3b of the reference, the Marine must be afforded the opportunity to review the Commanding Officer's recommendation, to include all information used by the Commander

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[REDACTED] USMC

to substantiate the recommendation, and must be given the opportunity to make a statement. In addition, the Marine must endorse any third party statements, acknowledging that the statement is submitted with his knowledge. Upon receipt of the detailed report, CMC may, inter alia, revoke the appointment and remove the Marine's name from the appropriate selection list, per paragraph 5200.6 of the reference.

d. In accordance with paragraph 5200.1 of the reference, Applicant's Commanding Officer forwarded enclosure (1), a detailed report supporting a determination that Applicant should not be promoted, to MMPR-2, in accordance with paragraph 5200.3 of the reference. Applicant was afforded an opportunity to review his Commanding Officer's recommendation and submit a statement on his own behalf. On 2 October 2006, Applicant submitted an appeal to CMC stating that he accepted responsibility for committing both counts of orders violation but disputed his guilt of the attempt charge. Applicant further stated that although the NJP imposed was just, revocation of his promotion was excessive punishment.

e. NJP serves as a valid basis to disqualify a Marine for promotion to the next higher grade. The evidence of Applicant's NJP therefore supports the discretionary determination that applicant failed to meet the Marine Corps' standards of professionalism, personal performance, and leadership.

5. Conclusion. Applicant's removal from the FY 2006 Gunnery Sergeant Selection List is supported by substantial evidence and is in accordance with applicable regulations. Accordingly, there was no error or injustice in revoking Applicant's appointment.

6. Please contact the Military Law Branch at (703) 614-4250, if you require additional information.



G. L. SIMMONS
Head, Military Law Branch
Judge Advocate Division
By direction of the
Commandant of the Marine Corps