



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

CRS
Docket No: 10794-07
8 October 2008



Dear [Redacted]:

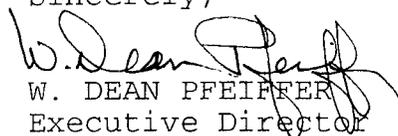
This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 8 October 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 15 January 2008, 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:

1070

JAM3

JAN 15 2008

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF NAVAL RECORDS

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

Ref: (a) SECNAVINST 5420.193
(b) MCO P1070.12K (IRAM)

1. You requested we provide an advisory opinion on [REDACTED] [REDACTED] (hereinafter "Applicant") removal of a page 11 entry to his service record book (SRB) dated 12 July 1999.

2. Opinion. We recommend the Board deny Applicant's request. Our analysis follows.

3. Background

a. On 12 July 1999, Applicant received a page 11 entry stating that he was eligible but not recommended for promotion to Sergeant.

b. Applicant states that he never received the non-judicial punishment (NJP) referenced in the page 11 entry. Furthermore, Applicant states that he was never given the opportunity to initial yes or no when asked if he wanted to make a rebuttal to the page 11 entry.

c. Applicant requests removing the page 11 entry from his SRB, stating that because he never received NJP, the entry alone is improper.

4. Analysis

a. First, we note that pursuant to reference (a), enclosure (1), section 3, the Board may reject the application for removal of the page 11 entry because it is untimely. An application for correction of a record must be filed within three years after discovery of the alleged error or injustice unless the Board excuses the untimely filing in the interest of justice. The applicant provided that he discovered the entry on 30 November 2007. However, his signature on the entry during

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

July 1999 put him on notice of its existence. Applicant has failed to make any showing that the interests of justice warrant its untimely consideration.

b. Paragraph f. of reference (b) requires a page 11 entry when a Marine is eligible but not recommended for promotion. The entry should state the reason for the recommendation against promotion. The evidence provided by Applicant indicates that an appropriate entry was made, but that he was not thereafter adjudicated by NJP. Furthermore, the fact that Applicant was not awarded an NJP does not invalidate the page 11 entry that generically references a pending NJP as a basis not to promote the Applicant.

c. Finally, the Applicant states that because he was not afforded the opportunity to initial a block stating that he choose "to" or "not to" make a rebuttal, that his page 11 entry should be removed. This claim is without merit. That he chose not to indicate his election to make a rebuttal statement, or to thereafter make a statement and have it included in his record, does not cause the entry to be unjust.

5. Conclusion. Accordingly, Applicant's requested relief should be denied.

6. This advisory opinion contains privileged attorney-client work product and is provided solely to BCNR. Please contact the Military Law Branch at (703) 614-4250, if you seek to release this memorandum.

[REDACTED]

Head, Military Law Branch
Judge Advocate Division
By direction of the
Commandant of the Marine Corps