



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

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JSR
Docket No: 01143-08
10 July 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 10 July 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 from Headquarters Marine Corps dated 27 May 2008, a copy of which is attached, and your letter dated 29 June 2008 with enclosure.

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.

The Board was unable to find your refusal to alter a decision by the previous commanding officer contributed to your having received the counseling entry at issue. The Board found the entry, while not detailed, was sufficiently specific to clarify why you had been counseled. Concerning your allegation that the

reasons for giving you a formal counseling entry kept changing, the Board noted the entry of record supersedes any preceding versions that were not submitted for entry in your record. The Board found the absence, from your fitness report for 4 December 2004 to 4 April 2005 (not on file in your record), of any reference to the counseling entry in question or the matter it addresses does not establish you had no behavior warranting formal counseling. The Board found the contested counseling entry was not a Marine Corps Separation Manual paragraph 6105 entry, as it makes no reference to administrative separation as a potential result of failure to respond properly to the counseling, and therefore, the requirement that such an entry be signed by a commanding officer was not applicable. The Board found the 2 October 2006 e-mail from Colonel G--- did indicate friction between you and Colonel K---, the officer who issued the contested entry, but concluded it did not prove he was biased against you. Your unsubstantiated assertion did not persuade the Board that this officer had tried to be your reporting senior. The Board found the delayed submission of the fitness report for 4 December 2004 to 4 April 2005, on which Lieutenant General M--- was the reporting senior, did not prevent you from discussing the contested entry with him. The Board did not accept your contention that the absence of information reflecting Lieutenant General M---'s position on the entry at issue supported granting your request to remove it from your record. The Board observed, contrary to your assertion, that commanding officers and commanding generals do not have authority to remove a counseling entry from the Official Military Personnel File (OMPF) after it has been filed there. Finally, the Board particularly noted that your rebuttal of 11 February 2005 to the contested entry acknowledged you did not contact the Commander, Marine Forces Reserve when the "external agency" called you.

Your rebuttal has been entered in your OMPF, but the rebuttal and the counseling entry to which it relates are not together (rebuttal in Service - Miscellaneous Folder, images 18 and 19 and counseling entry in Service - Contract Folder, image 42).

In view of the above, 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