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

BJG
Docket No: 2949-08
6 March 2009

[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.

It is noted that the Commandant of the Marine Corps (CMC) has directed modifying the contested fitness report for 1 July 2006 to 30 April 2007 by changing the entry in section A, item 4 ("Duty Assignment") from "Supply Chief" to "Supply Officer." Headquarters Marine Corps (HQMC) has further corrected section A of the report by entering "GYSGT [gunnery sergeant]" in item 1.e ("Grade"), "20031001 [1 October 2003]" in item 1.f ("DOR [Date of Rank]"), "TR [transfer]" in item 3.a ("Occasion") and "20070331 [31 March 2007]" in item 3.b ("Period Covered - To").

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 5 March 2009. 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 report of the HQMC Performance Evaluation Review Board (PERB), dated 21 March 2008, and the advisory opinions from the HQMC Enlisted Promotion Section (MMPR-2), dated 27 June 2008, and the

HQMC Manpower Information Operations, Manpower Management Information Systems Division (MIO), dated 3 September 2008, copies of which are attached. The Board also considered your counsel's rebuttal letter dated 28 March 2008.

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 report of the PERB and the advisory opinions from MMPR-2 and MIO.

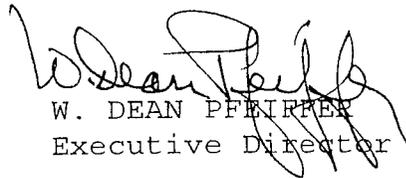
The statements you provided at enclosures (9) through (13) of your application did not persuade the Board that you were not disrespectful. The Board found the statement at enclosure (13) did not contradict the assertion, in the fitness report, that the alleged disrespect occurred in the presence of younger enlisted Marines, as the statement says "The supply Marines began leaving the warehouse area" when it occurred, not that they had all left. The Board was unable to find the contested fitness report placed undue emphasis on one incident. Concerning the justification for section E of the fitness report, the Board did not find the word "altercation" ambiguous, and it observed there is no reference to "The first incident...by the previous Inspector-Instructor." Regarding the comment, in the justification for section G, that your initial refusal to sign the contested counseling entry exhibited poor judgment, the Board did not accept your assertion that such refusal does not mean you exhibited poor judgment. Finally, while the Board did not condone the late submission of the fitness report, it did not find this invalidated the report. In this regard, the Board was unable to find the late submission impaired your ability to respond effectively.

In view of the above, your application for relief beyond that effected by CMC and HQMC 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

Enclosures

Copy to:

