



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

BJG
Docket No: 3840-08
27 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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 26 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 Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB), dated 17 April 2008, and the advisory opinion from the HQMC Manpower Information Operations, Manpower Management Information Systems Division (MIO), dated 14 November 2008, copies of which are attached. The Board also considered your counsel's letters dated 28 July and 22 December 2008, his electronic mail dated 19 March 2009 (withdrawing his request to remove the fitness report for 12 May to 13 October 2004), and an undated letter of support for you from Major J. C. S---, United States Marine Corps Reserve.

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 substantially concurred with the comments contained in the report of the PERB in finding that the contested fitness report should stand. While the Board did not agree with the PERB statement, in paragraph 3.a, that you had provided no evidence to support a finding that immediate action should have been taken that would have prevented the alcohol incident for which you were convicted, the Board concluded the evidence you had submitted was insufficient to make such a finding. To the extent this report reflected "personal opinions," the Board found this was permissible. Finally, the Board found the Enlisted Promotion Manual prohibition against promoting an enlisted Marine within a year after a conviction of the kind you received did not preclude marking section A, item 7 of your fitness report to reflect you were recommended for promotion.

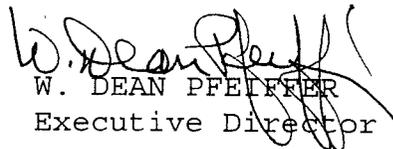
The Board found the service record page 11 ("Administrative Remarks (1070)") counseling entry at issue should stand as well. The Board found it proper that this entry was not issued until 9 March 2005, after you had been convicted in January 2005, and it further found the entry was issued reasonably soon after the conviction. The Board found it an immaterial error that the entry stated "You are further counseled that you will not be recommended for promotion while pending adjudication of this civilian offense" when you had already been convicted.

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

Enclosures

Copy to:

