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

JSR
Docket No: 4110-08
31 July 2008

[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 31 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 10 June 2008, a copy of which is attached, and your letter dated 14 July 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 advisory opinion. The Board did not accept your unsupported assertion that the tests on which the blood alcohol level cited in the contested documentation were thrown out in court. 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



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

IN REPLY REFER TO:

1070

JAM3

MEMORANDUM FOR EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

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

Ref: (a) MCO P1070.13k (IRAM)

1. You requested we provide an advisory opinion [REDACTED] hereinafter "Applicant") application requesting the removal of adverse material from his Official Military Personnel File (OMPF).

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

3. Background

a. On 4 August 2005, Applicant was arrested for driving under the influence (DUI) on Interstate 95 in Prince William County, Virginia. Upon testing, Applicant registered a .095 blood alcohol content (BAC). On 2 November 2005, Applicant pled guilty to reckless driving and was ordered to pay \$317.00 in fines/costs and to attend the Alcohol Safety Action Program in Manassas, Virginia.

b. On 21 December 2005, the Deputy Commandant for Manpower and Reserve Affairs (DC M&RA), as the Show Cause Authority for the Marine Corps, terminated administrative proceedings and closed Applicant's misconduct case and notified Applicant that the adverse material regarding this incident would be included in his OMPF.

4. Analysis. Applicant's request for relief is based on his belief that the inclusion of the adverse material in his OMPF inaccurately suggests he had a DUI conviction. We disagree.

a. The reference specifically provides for the inclusion of adverse material in an officer's OMPF. Per the reference, each officer's OMPF includes a Commendatory/Derogatory Folder. This folder contains various documents regarding civilian and

Subj: APPLICATION FOR CORRECTION IN THE CAS [REDACTED]

military education, personal awards information, courts-martial/non-judicial punishments, and other material reflecting significant personal achievement or adversity that is pertinent to making decisions for purposes of selection, assignment, and retention. Specifically, in accordance with paragraph 1000.4(2)(a) of the reference, CMC (MMSB) will file correspondence containing adverse material that the Marine reported on has had the opportunity to contest, explain, or rebut, whether at a personal hearing or by statement, without additional referral to the individual. This includes relevant memoranda prepared at HQMC resulting from official correspondence sent to and received by the Marine reported on, the reporting senior, or the reviewing officer. In this case, Applicant received notification and copies of the specific documents that would be included in his OMPF and was provided an opportunity to submit a response to the adverse material. On 17 November 2005, Applicant acknowledged receipt of the report of misconduct and indicated that he did not desire to submit matters concerning the incident.

b. Applicant does not allege the adverse information he requests be removed is inaccurate, but rather it inaccurately suggests he received a DUI conviction. The adverse materials appropriately chronicle the Applicant's initial incident and subsequent actions taken in his civilian case pursuant to the reference. Although the report reflects negatively upon Applicant, it accurately states the facts and the chronology of the case and the subsequent remedial actions taken by him. These materials are appropriately included in his OMPF.

5. Conclusion. Accordingly, we recommend that Applicant's request to remove adverse material from his OMPF 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 any of this information.



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