



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

JSR  
Docket No. 04984-09  
4 June 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.

You requested removing the fitness reports for 2 July to 18 October 2005, 19 October to 2 November 2005, 3 November to 1 December 2005 and 2 December 2005 to 21 March 2006. You further requested setting aside your nonjudicial punishment (NJP) of 21 November 2005 and your relief from Equal Opportunity Representative (EOR) duties of 5 December 2005. You also requested that your record be corrected to show you were not subject to any promotion restriction by reason of NJP, and that your promotion pursuant to your selection by the FY 2005 Reserve Staff Sergeant Selection Board was not delayed, nor was your selection revoked. You impliedly requested removing documentation of the delay of your promotion and revocation of your selection by the FY 2005 Reserve Staff Sergeant Selection Board. Finally, you requested adjusting your staff sergeant date of rank and effective date from 1 April 2009 to reflect selection by the Fiscal Year (FY) 2005 Reserve Staff Sergeant Selection Board, vice the FY 2009 Reserve Staff Sergeant Selection Board. In this regard, you requested adjustment to 1 January 2006, the date you would have received without any promotion restriction or delay of promotion; or in the alternative, ~~1 March 2006, the date you would have received upon~~ expiration of your three-month promotion restriction by reason of your contested NJP, had your promotion not been delayed for four months; or as a third choice, 1 April 2006, the date you would have received upon expiration of your four-month promotion delay, had your selection not been revoked.

It is noted that the Commandant of the Marine Corps (CMC) has directed removing the contested fitness reports for 2 July to 18 October 2005, 19 October to 2 November 2005 and 3 November to 1 December 2005. Your request to remove the report for 2 December 2005 to 21 March 2006 was not considered, as it does not appear in your Official Military Personnel File.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 4 June 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 9 March 2009, the advisory opinion furnished by the HQMC Enlisted Promotion Section (MMPR-2) dated 1 May 2009, the MMPR-2 e-mails dated 21 and 27 May 2009, the memorandum for the record dated 3 June 2009, and the HQMC Performance Evaluation Review Branch (MMER) e-mail dated 26 May 2009, copies of which are attached. The Board also considered your e-mails dated 27 May 2009, 2 June 2009 with enclosures and attached e-mails, 2 June 2009 (second of the same date) and 4 June 2009 with attachments.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish probable material error or injustice.

The Board found that the NJP should stand. In this connection, the Board particularly noted that the regimental commanding officer (CO)'s letter dated 1 December 2005, denying your appeal of the NJP, shows the procedural error regarding availability of witnesses on your behalf was cured. The Board was unable to find the appeal was not afforded legal review. The Board was likewise unable to find that Captain R--- attempted to assault you; that you were forced to sign an entry indicating you did not desire to submit a statement regarding the NJP; or that your defense counsel was not as helpful to you as he should have been, as he was helping both you and the command at the same time.

The Board found that your relief from EOR duties should stand as well. While the Board recognized this relief occurred two days after your having admonished First Lieutenant C--- in your

capacity as the EOR, and the very next day after you had filed a request mast against him, the Board could not find the relief was based on your having filed a request mast against him; nor could it find the relief was based on your having admonished him for his treatment of a subordinate, as opposed to the manner in which you admonished him. The Board did not find it objectionable that the CO considered input from First Lieutenant C---, who was the adjutant, in deciding to relieve you.

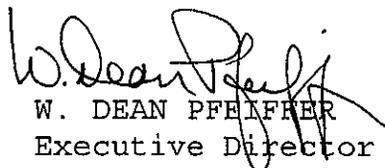
The Board was unable to find that the command's correspondence with MMPR-2 dated 4 December 2005, recommending a four-month delay of your promotion, was based on anything other than the NJP, noting that the appeal of your NJP was not denied until 1 December 2005. The Board also noted that this correspondence was submitted promptly, less than 30 days after the NJP, and only three days after the appeal had been denied.

Since the Board found that your relief from EOR duties should stand, the Board was unable to find the command's recommendation for revocation of your selection, which expressly cited that relief, was unwarranted.

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