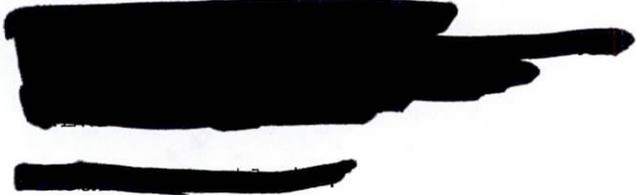




DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

TJR  
Docket No: 6480-10  
20 October 2010



This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, 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 19 October 2010. The names and votes of the members of the panel will be furnished upon request. 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.

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

You entered active duty in the Marine Corps on 1 June 2000. You were promoted to the rank of captain on 1 October 2002 and served for nearly seven years without disciplinary incident. However, your record reflects that on 19 March 2007 you received nonjudicial punishment (NJP) for two specifications of assault consummated by a battery, two specifications of conduct unbecoming an officer and a gentleman, and dereliction of duty. The punishment imposed was a punitive letter of reprimand. The record further reflects that you did not appeal the NJP.

As a result of the foregoing, you were required to show cause for retention in the Marine Corps before a Board of Inquiry (BOI). On 31 October 2007, a BOI determined that, although the allegations for which you were required to show cause for retention were proven by a preponderance of the evidence, you were recommended retention. The BOI further recommended that

your case be closed. On 31 January 2008 this recommendation was approved by the Deputy Commandant, Manpower and Reserve Affairs.

On 13 February 2009 you were advised that due to your twice failing selection to the next higher grade, you were to be separated from the Marine Corps. In this regard, on 1 August 2009, while serving in the rank of captain, you were honorably discharged by reason of "Nonselection, Permanent Promotion."

The Board, in its review of your entire record and application with attachments and addendum documentation, carefully weighed all potentially mitigating factors, such as your period of honorable service, character references, letters of recommendation, and desire to have your NJP and all references thereto removed from the record and to have certain documents corrected or reworded to reflect what you believe contain factual or legal error. It also considered your desire to have your record reflect that you were recommended for a commission in the Marine Corps Reserve. Nevertheless, the Board concluded these factors were not sufficient to warrant approval of such actions because of the seriousness of your misconduct as a commissioned officer in the Marine Corps, which resulted in NJP and failing to select for promotion. Accordingly, your application has been denied.

The rewording or rephrasing of "documents" in your record is an administrative action which is not under the purview of the Board. As such, the Board noted that you should contact Headquarters, United States Marine Corps, Deputy Chief of Staff for Manpower and Reserve Affairs (M&RA) Department, Code MMER, 3280 Russell Road, Quantico, VA 22134-5103 to request that administrative corrections be made to your record.

In regards to your request to appear before the Board, be advised that our regulations state that personal appearances before the Board are not granted as a right, but only when it determines that such an appearance will serve some useful purpose. In your case, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

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