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

BJG
Docket No: 11428-10
10 November 2010

[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 modifying the fitness report for 1 October 2009 to 28 January 2010 by removing, from section K.4 (reviewing officer's comments), the comment "SNM [subject named Marine] does not possess the mental dexterity required to lead Marines in extremely challenging environments." In the alternative, you requested completely removing the contested report. Finally, you requested modifying your Marine Corps Total Force System data by removing the Draw Case Code "AU" (subject of adverse material).

It is noted that the Commandant of the Marine Corps (CMC) has directed modifying the fitness report in question by removing, from section K.4, the following:

Despite counseling from myself, the SgtMaj [sergeant major] and Bn XO [battalion executive officer], SNM allowed his emotions to get the best of him, ultimately lost his bearing and assaulted a junior Marine resulting in a relief for cause by me. SNM does not possess the mental dexterity required to lead Marines in extremely challenging environments.

CMC further directed removing, from page 2 of your statement dated 20 February 2010, the following: "I do possess the

mental dexterity to lead Marines in extremely challenging environments." and "At no time did the BN CO [commanding officer], XO counsel me regarding my actions as a Company 1stSgt [first sergeant]."

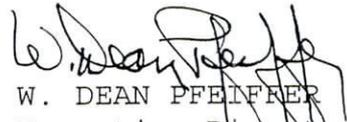
A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 9 November 2010. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. 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 Performance Evaluation Review Board (PERB), dated 13 October 2010, a copy of which is attached. The Board also considered your rebuttal letter dated 26 October 2010 with enclosures.

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. The Board noted the commanding general's endorsement on the preliminary inquiry did not express disagreement with your relief as company first sergeant. The Board was unable to find your relief for cause was not forwarded via the chain of command in accordance with Marine Corps Order 5320.17. Since the Board found no basis to set aside your relief, it had no grounds to remove the "AU" code. 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