



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

JRE
Docket No: 4434-02
6 September 2002



Dear [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 29 August 2002. 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 furnished by Headquarters, U.S. Marine Corps dated 28 June 2002, a copy of which is attached, and your rebuttal thereto.

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. It was not persuaded that any material error or injustice occurred in your case. It noted that had your release from active duty been deferred beyond 31 October 2001, and your medical board accepted by the Physical Evaluation Board, you would not have been retired by reason of physical disability because your condition was relatively minor in nature, and the presumption of fitness which applies to service members being referred to the disability evaluation system after commencing processing for non-disability retirement would not have been overcome. In this regard, your attention is invited to paragraph 2 of the 21 September 2001 message from MMSR2 to you which was submitted with your application.

In view of the foregoing, 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



MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR APPLICATION IN THE CASE OF [REDACTED]

Ref: (a) MMER Route Sheet, Docket No. 4434-02 of 31May02

1. Reference (a) requests an advisory opinion on Gunnery Sergeant [REDACTED] request to have his record corrected to show reassignment to active duty to undergo medical processing.
2. On 1 August 2000, Gunnery Sergeant [REDACTED] submitted a request to transfer to the Fleet Marine Corps Reserve (FMCR). The initial request was approved for transfer to FMCR date of 31 August 2001. On 24 August 2001 he notified this office by E-Mail that surgery was scheduled for September 2001. We replied that a letter of confirmation from a doctor was required before an extension on active duty could be granted. The FMCR date was then modified to 30 September 2001.
3. On 19 September 2001 another request was sent to this Headquarters to further modify the FMCR date. We responded by directing that a complete Medical Board Report be forwarded to the Physical Evaluation Board (PEB) not later than 31 October 2001. The FMCR date was further modified to 31 October 2001.
4. By telephone call to Naval Hospital, Camp Pendleton on 15 October 2001 we were told that the report was sent to the PEB on that day. However, we later learned that the Medical Board Report was not received at the PEB by 31 October. Gunnery Sergeant [REDACTED] then on terminal leave, was transferred to the FMCR on 31 October 2001. He was not on medical hold. An FMCR member is entitled to full retirement benefits including treatment at military medical facilities and eligibility for TRICARE enrollment.
5. Unfortunately, we cannot recommend assignment to active duty based on the information submitted. We recommend that Gunnery Sergeant [REDACTED] be allowed to submit documentation regarding his medical condition to the PEB for review and further advisory opinion.

[REDACTED]
[REDACTED], ON
Head, Separation and
Retirement Branch
By direction of the Commandant
of the Marine Corps