



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

BJG
Docket No: 1138-01
18 January 2002

MSG [REDACTED] USMC RET
[REDACTED]
[REDACTED]

Dear Master Serge [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 remedial consideration for promotion to master gunnery sergeant, removal from your Official Military Personnel File (OMPF) of references to your 1990 and 1996 general court-martial convictions, and removal of information about your convictions from state or federal criminal indexes and/or data bases. As indicated in the enclosed memorandum for the record dated 15 January 2002, Headquarters Marine Corps (HQMC) will remove from your OMPF the references to your convictions. Your request to remove information about your convictions from state or federal criminal indexes and/or data bases was not considered, as this is not within the jurisdiction of the Board for Correction of Naval Records.

A three-member panel of the Board, sitting in executive session, considered your application on 17 January 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 opinions from HQMC dated 19 June and 19 November 2001, copies of which are attached. They also considered your counsel's rebuttal letters dated 17 September and 11 December 2001.

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 dated 19 November 2001 in concluding that you did not rate remedial consideration for promotion. Accordingly, 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

Enclosures

Copy to:

A large, dark, irregular redacted area covering several lines of text.



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
MANPOWER AND RESERVE AFFAIRS DEPARTMENT
HARRY LEE HALL, 17 LEJEUNE ROAD
QUANTICO, VIRGINIA 22134-5104

IN REPLY REFER TO:

1400/3
MMPR-2
19 Jun 01

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

Subj: ADVISORY OPINION IN THE CASE OF MSGT [REDACTED]
[REDACTED] RETIRED MARINE

Ref: (a) MSg [REDACTED] DD Form 149 of 1 Feb 01

1. In reply to the reference, if Master Sergeant [REDACTED] was exonerated of all charges while serving on active duty then he would have been eligible for remedial consideration for promotion for all boards in which he would have been eligible for consideration by. However, since he has retired from active duty, he is no longer eligible for remedial promotion consideration.

[REDACTED]
Acting Head, Enlisted Promotions
Promotion Branch
By direction of
the Commandant of the Marine Corps



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
MANPOWER AND RESERVE AFFAIRS DEPARTMENT
HARRY LEE HALL, 17 LEJEUNE ROAD
QUANTICO, VIRGINIA 22134-5104

IN REPLY REFER TO:
1400/3
MMPR-2
19 Nov 01

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

Subj: ADVISORY OPINION IN THE CASE OF MASTER SERGEANT [REDACTED]
[REDACTED] USMC (RET)

Ref: (a) DD Form 149 of 2 Jan 01
(b) MMPR-2 ltr 1400/3 MMPR-2 dtd 19 Jun 01

1. Master Sergeant [REDACTED] requested remedial consideration for selection to master gunnery sergeant due to a finding of not guilty at his court-martial of 24-25 Oct 81. *00 m*
2. Master Sergeant [REDACTED] was promoted to his current rank on 1 Oct 87. His Armed Forces Active Duty Base Date is 21 Nov 66. The first time he would have been eligible for selection to Master Gunnery Sergeant was by the CY91 Sergeant Major through Master Sergeant Selection Board. On 1 Nov 87 Master Sergeant [REDACTED] extended his enlistment for 23 months. His EAS became 30 Sep 89. In 1989, prior to his EAS, Master Sergeant [REDACTED] was accused of two violations of the UCMJ. It is the opinion of this office that Master Sergeant [REDACTED] had no intention of remaining in the Marine Corps and becoming eligible for the CY91 Sergeant Major through Master Sergeant Selection Board and he should not be given remedial consideration for selection to master gunnery sergeant. If the BCNR determines that Master Sergeant [REDACTED] does rate consideration for selection to master gunnery sergeant, we recommend BCNR direct Promotion Branch, Headquarters, Marine Corps to consider Master Sergeant [REDACTED] record for remedial selection to master gunnery sergeant for CY 1991. We further recommend the results of this board would exhaust the administrative means for his appeal.
3. Point of contact at this command is [REDACTED] at
comm [REDACTED]

[REDACTED]

Head, Enlisted Promotion Section

MEMORANDUM FOR THE RECORD

**DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR)
PERFORMANCE SECTION
2 NAVY ANNEX, SUITE 2432
WASHINGTON, DC 20370-5100
TELEPHONE: (703) 614-2293 OR DSN 224-2293
FACSIMILE: (703) 614-9857 OR DSN 224-9857**

DATE: 15JAN02

DOCKET NO: 1138-01

PETITIONER (PET): MSGT [REDACTED], USMC (RET)

PARTY CONTACTED: [REDACTED], HQMC MMSB, [REDACTED]

WHAT I SAID: I ASKED BILL IF HE COULD ADMINISTRATIVELY REMOVE THE RECORD OF PET'S GCM CONVICTION ILO THE COURT SET ASIDE ON APPEAL.

WHAT PARTY SAID: [REDACTED] ANSWERED IN THE AFFIRMATIVE.



BRIAN J. GEORGE