



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

BJG
Docket No: 7865-98
27 May 1999

MR [REDACTED]

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 27 May 1999. 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 Marine Corps, dated 24 March 1999, a copy of which is attached.

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. Accordingly, 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



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
2 NAVY ANNEX
WASHINGTON, DC 20380-1775

IN REPLY REFER TO:
1070
JAR1
24 MAR 1999

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

Subj: BOARD FOR CORRECTION OF NAVAL RECORDS (BCNR) APPLICATION
IN THE CASE OF FORMER LANCE CORPORAL [REDACTED]
[REDACTED] S. MARINE CORPS

- 1. We are asked to provide an opinion regarding Petitioner's request to remove an administrative reduction in grade due to competency review proceedings.
- 2. From the available records, we conclude that Petitioner's reduction in grade following competency review proceedings was not an error or injustice warranting correction.
- 3. Background. Petitioner was administratively reduced from the pay grade of sergeant to corporal on 770606 following competency review proceedings.

4. Analysis

a. Under 10 U.S.C. 1552(b), no correction may be made to a servicemember's record unless he files a request for correction within 3 years of discovering the error or injustice. Petitioner does not adequately explain why he waited over 21 years to file this request for correction. It should be denied as untimely.

b. Petitioner complains that his platoon commander was the "judge" of his competency review board. Petitioner asserts "someone who did not know what was going on" should have been "judge." Furthermore, Petitioner challenges the resulting reduction claiming, "I had a clean record for 5 years before this happen (sic). . ."

c. Petitioner's arguments are without merit. The provisions of the Marine Corps Promotion Manual in effect at the time simply required that the competency review board consist of not less than three officers. See paragraph 4010.4a, Marine Corps Promotion Manual, MCO P1400.29B. The only officer not eligible to serve on the board was the commanding officer who convened it. Consequently, Petitioner's platoon commander was eligible to

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[REDACTED] U.S. MARINE CORPS

serve on Petitioner's competency review board, no matter how much or how little he knew about Petitioner's case.

d. Petitioner's claim that his record was "clean" for 5 years before his administrative reduction in grade grossly conflicts with his military record. Petitioner received nonjudicial punishment on 730223 for a violation of Article 86, Uniform Code of Military Justice (UCMJ) for failing to go to his appointed place of duty. Petitioner received a second nonjudicial punishment on 770107 for a violation of Article 86, UCMJ, unauthorized absence. Petitioner received a third nonjudicial punishment on 770519 two violations of Article 92, UCMJ, for disobeying an order and for being derelict in his duties. He was also counseled regarding his substandard performance as a sergeant on 770204. Petitioner's record prior to his administrative reduction can hardly be said to have been clean.

5. Conclusion. We conclude from the limited records available that Petitioner's claims of error in his competency review proceedings were without merit. Therefore, we find no error or injustice requiring corrective action.

[REDACTED]

Head, Research and Civil
Law Branch
Judge Advocate Division