



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

LCC:lc
Docket No.1395-99
26 July 1999

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy
Subj: GUNNERY SERGEANT [REDACTED], USMC,
RETIREED
Ref: (a) Title 10 U.S.C. 1552
Encl: (1) DD Form 149 w/attachments
(2) Msg 211922Z APR 96
(3) Ltr MARSPTBN 1400 MSB/amh of 8 May 96
(4) Ltr MARBKSGNDEF 5800 S-1, undated
(5) Ltr Capt [REDACTED] 5800 Airo of 13 Jun 96
(6) First Endorsement 5800 CO of 21 Jun 96
(7) Ltr from [REDACTED] to CMC of 13 Dec 96
(8) CMC ltr, 1400/3 MMPR-2 of 3 May 99
(9) Petitioner's Microfiche Record

1. Pursuant to the provisions of reference (a), subject, hereinafter, referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected to show Petitioner was promoted to paygrade E-8 effective 1 May 1996 and transferred to the Retired List in paygrade E-8.

2. The Board, consisting of Mses. Madison, Taylor, and Mr. Pauling reviewed Petitioner's allegations of error and injustice on 20 July 1999 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and justice, finds as follows:

a. Petitioner had been selected for promotion to Master Sergeant, paygrade E-8, and the Commandant of the Marine Corps (CMC) advised the unit the effective date of the promotion would be 1 May 1996.

b. On 21 April 1996, Petitioner's commanding officer recommended to CMC that his promotion to Master Sergeant be withheld pending the outcome of a preliminary investigation into possible fraternization between Petitioner and a female Lieutenant Junior Grade (LTJG) who was attached to the Naval Hospital, Guantanamo Bay as a nurse. See enclosure (2).

c. Petitioner and the LTJG had known each other when both were on active duty as enlisted personnel and were friends prior to the LTJG receiving her commission.

d. Lt [REDACTED], USNR, was appointed to conduct the preliminary investigation and submitted his findings on 26 April 1996. Although no fraternization or misconduct was found to have occurred between the Petitioner and the LTJG she was verbally counseled by her superior against entering into unduly familiar relationships with enlisted men.

e. By enclosure (3) dated 8 May 1996, the Commanding Officer, Marine Support Battalion informed CMC (MMPR-2) that the Navy investigation had been completed and there were no charges or punitive actions pending or anticipated. Petitioner was recommended for promotion to Master Sergeant with his strongest endorsement for promotion.

f. The letter, dated 8 May 1996, recommending the promotion be made effective was addressed to CMC via Commanding General (CO1), Marine Corps Combat Development Command, Quantico, VA 22134. Subsequently, Commanding Officer, Company Lima was advised by the Staff Judge Advocate at Quantico that it was unhappy with the preliminary investigation and asked that a Marine investigating officer be appointed to ascertain additional information.

g. Captain [REDACTED], USMC, was appointed to conduct a formal investigation to inquire into the alleged fraternization between the Petitioner and the LTJG. See enclosure (4).

h. As evidenced by enclosure (5) Capt [REDACTED] investigation did not disclose any fraternization or misconduct between Petitioner and the LTJG. He recommended several actions, one of which was that the Petitioner should be promoted immediately to the rank of Master Sergeant with all the authority, responsibility, and privileges afforded to that grade.

i. The Commanding Officer, Marine Barracks, Ground Defense/Security Force, Guantanamo Bay, Cuba placed an endorsement dated 21 June 1996 on Captain [REDACTED] investigative report, in which he disagreed with the report and recommended that Petitioner not be promoted. See enclosure (6). Petitioner

was not a member of the Marine barracks command, the investigation was conducted by the Marine barracks as a courtesy to the Commanding Officer, Marine Support Battalion.

j. On 13 December 1996 the Petitioner submitted a letter, attached as enclosure (7), to CMC requesting that he either be promoted or charged with a violation under the Uniform Code of Military Justice (UCMJ). He stated that he had been tried, convicted, and punished for an incident which he had never been charged. CMC denied his request to be promoted.

k. Petitioner was transferred to the Retired List effective 30 April 1997 in paygrade E-7.

l. In correspondence attached as enclosure (8), the office having cognizance over the subject matter involved in Petitioner's application, has commented to the effect that the request does not have merit and recommends denial.

MAJORITY CONCLUSION:

Upon review and consideration of all the evidence of record, notwithstanding the comments contained in enclosure (), the majority of the Board finds the existence of an injustice warranting the requested relief. In this connection, the majority consisting of Ms. Madison and Mr. Pauling, finds that there is insufficient evidence to show that Petitioner ever engaged in fraternization with the LTJG. The majority takes note of the fact that the base was an extremely small community and the social facilities were not designated "commissioned" or "enlisted" but were used by both. Although they were seen in various social environments at the same time no one ever perceived them to be "together, as a couple". The preliminary investigation conducted by Lt. [REDACTED], USN, and the formal investigation conducted by Captain [REDACTED], USMC, found no fraternization or misconduct between the Petitioner and the LTJG. The majority, also, concludes that the Commander of the Marine Barracks did not have an adequate factual basis to override the result of two (2) different investigating officers of two (2) difference services. Furthermore, the majority also finds it significant that the Commanding Officer of Company Lima had recommended that the Petitioner should be promoted. Ms. Madison and Mr. Pauling agree.

MINORITY CONCLUSION: The Minority, Ms. Taylor, opined that since there was the appearance of fraternization she must concur with the advisory opinion.

MAJORITY RECOMMENDATION:

That Petitioner's naval record be corrected, where appropriate, to show that:

a. Petitioner was advanced to paygrade E-8 effective 1 May 1996.

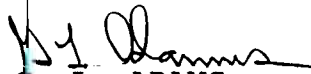
b. Petitioner was transferred to the Retired List on 1 May 1997 in paygrade "E-8" vice paygrade "E-7".

MINORITY RECOMMENDATION:

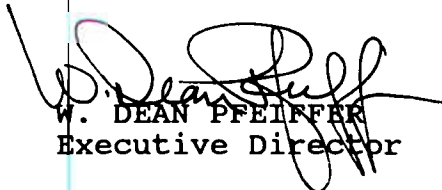
Petitioner's request to be advanced to paygrade E-8 and to show retired in paygrade E-8 is denied.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above-entitled matter.

ROBERT D. ZSALMAN
Recorder


G. L. ADAMS
Acting Recorder

5. The foregoing action of the Board is submitted for your review and action.


W. DEAN PFEIFFER
Executive Director

Docket No. 1395-99

I specifically concur with the findings and conclusions of the majority of the Board and the majority recommendation for relief is approved.

Karen S. Heath

AUG 12 1999

KAREN S. HEATH
Principal Deputy Assistant Secretary of the Navy
(Manpower and Reserve Affairs)



~~I specifically concur with the finding, conclusions, and recommendation of the minority of the Board that relief is not warranted and his request is denied.~~