



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

TRG
Docket No: 1795-01
14 February 2002

[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 12 February 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.

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.

You reenlisted in the Marine Corps on 22 March 1997 for two years in the grade of SSGT (E-6). At that time, you had over 13 years of active duty. A letter in your record states that this was a probationary reenlistment because of financial irresponsibility, and you had been officially counseled concerning this matter. The record shows that your divorce became final on 7 September 1997 and you were granted sole custody of your two minor children.

In the fitness report for the period 1 October 1998 to 1 February 1999, you were assigned an adverse mark in initiative and marked as unsatisfactory in the comparative assessment section. Although you submitted several statements, the report has been accepted and is on file in your service record. The fitness report comments state that you had been counseled on three occasions concerning your deficiencies. You received a marginal fitness report and a not observed fitness report in the five months preceding your discharge. The record shows that you were denied reenlistment and were honorably discharged on 21 June 1999 with an RE-4 reenlistment code. At the time of your discharge you had completed 15 years, 8 months and 4 days of active service

and were paid one half separation pay in the amount of \$19,489.02.

On 16 July 1999, Headquarters Marine Corps directed that the fitness report for the period 16 March to 21 June 1996 be removed from your record. The reason for the removal of this report is not stated.

In your application you are requesting reenlistment in the Marine Corps, a change in the reenlistment code, payment of full separation pay and/or early retirement from the Marine Corps. The Board can correct a record, but the decision to authorize reenlistment is solely a matter within the prerogative of the Marine Corps. In addition, the Marine Corps did not implement the temporary early retirement authority, and there is no provision for early retirement in your case. You contend, in effect, that the decision to only grant you the two year probationary reenlistment was unjust because it was based on the fitness report which has now removed from your record. You further contend that your performance was better than that set forth in the fitness report for the period ending 1 February 1999.

The Board noted that even without the removed fitness report, there is documentation to support the decision to only grant a probationary reenlistment. Therefore, the Board could not conclude that there was an abuse of discretion in this matter. The Board believed that the adverse fitness report for the period ending 1 February 1999 and the recommendation that you not be reenlisted by your commanding officer were sufficient to support the decision by Headquarters Marine Corps not to grant you further service. Regulations require the assignment of an RE-4 reenlistment code when an individual is not recommended for retention. Since you have been treated no differently than others in your situation, the Board could not find an error or injustice in the assignment of an RE-4 reenlistment code.

Concerning your request for full separation pay, the regulations authorize the payment of only one half separation pay if an individual is not fully qualified for retention. Since you were not recommended for retention because of performance problems, the Board concluded that one half separation pay was appropriate in your case.

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