



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

LCC:lc  
Docket No. 6249-00  
25 January 2001

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

Ref: (a) Title 10 U.S.C. 1552

- Encl:
- (1) DD Form 149 w/attachments
  - (2) CMC, ltr 1450/5, MMPR-2 of 15 Apr 98
  - (3) MCB, ltr Consolidated Substance Abuse Counseling Center, undated
  - (4) CMC ltr Waiver of Alcohol related incident of 6 Dec 97, of 25 Feb 98
  - (5) MCO P1400.32B, para 1200.4
  - (6) MCO P1400.32B, para 4502.2b
  - (7) CMC, ltr, 1450/5, MMPR-2 of 15 Apr 98
  - (8) CMC, ltr, 1400/3, MMPR-2 of 23 Oct 00
  - (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 that he was promoted to staff sergeant, paygrade E-6, effective 1 May 1998.

2. The Board, consisting of Mses. Madison, McCormick, and Mr. Geisler, reviewed Petitioner's allegations of error and injustice on 12 December 2000 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 was selected for promotion to staff sergeant, paygrade E-6, from the FY 1997 Staff Sergeant Selection Board. The promotion would have been effective 1 May 1998; however, the Commandant of the Marine Corps (CMC), deleted his name from the selection list on 15 April 1998. See enclosure (2)

b. The following facts formed the basis for the CMC's action. Petitioner was stationed in Okinawa, Japan and on 6 December 1997, he was cited for driving under the influence of alcohol (DUI). His blood alcohol level was reported at 0.06, one-tenth of a point over the base limit of 0.05 which was the law in Okinawa, Japan.

c. As punishment, his driving privileges on base were administratively suspended for three months. There is no record of the incident in his personnel records. A subsequent Consolidated Substance Abuse Counseling Center found that this was an isolated incident and Petitioner was unlikely to experience alcohol/drug problems in the future. See enclosure (3).

d. Enclosure (4) shows that in February 1998, Petitioner was screened and selected for Drill Instructor Duty and granted a "CMC" waiver for the alcohol related incident.

e. On 5 March 1998 he departed Kadena AFB, Okinawa, Japan going on 30 days leave enroute to his new assignment.

f. MCO P1400.32B, paragraph 1200.4 requires that the commanding officer notify CMC when an individual on a selection list for promotion is involved in, among other things, a DUI incident. The commanding officer subsequently recommended that Petitioner be promoted with his peers in spite of the incident. This recommendation was favorably endorsed until it reached the Commanding General, 1st Marine Aircraft Wing, who recommended that the promotion be withheld for three months. See enclosure (5).

g. Marine Corps Order P1400.32B, Paragraph 4502.b requires that the Marine be afforded an opportunity to review any "conflicting" endorsement and provide additional comments. A letter dated 1 April 1998 suggested that Petitioner was afforded that opportunity, when in fact, he was not. A signature appears on the letter but it is not Petitioner's signature. The letter with his alleged "signature" is dated 1 April 1998. He was not in Okinawa on that date. See enclosure (6).

h. Marine Corps Order P1400.32B, paragraph 4502.4 requires an entry on the page 11 of the Service Record Book indicating that his promotion was pending. No such entry was made.

i. On the day of this DUI incident, in the words of the Assistant Chief of Staff, 1st Marine Aircraft Wing, ". . . Petitioner was not carousing on the evening of 5 December 1997 but was supporting the command by participating in a command sponsored athletic event after a very full day. On deployment

and in garrison, he has consistently produced superior results in the performance of his regular duties. A high achiever, he works well with others and requires little, or no supervision. His willingness to work long hours and his tireless and devoted efforts to improve mission essential programs within his section has earned him the trust and confidence of his superiors. . .".

j. Administrative action was imposed by the traffic court and Petitioner did receive unit counseling but not Non-Judicial Punishment. No entry was made in his personnel records of this incident and he was awarded his Good Conduct Medal on the date he was scheduled to receive it, i.e., on 28 May 1998.

k. Petitioner was not advised that his promotion had been withdrawn by CMC until he inquired about his promotion warrant in May 1998. On 4 June 1998, approximately 3 weeks before his class graduation on 25 June 1998, he received a fax of a letter dated 15 April 1998 which revoked his selection for promotion to paygrade E-6. See enclosure (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 Petitioner's request does not have merit and warrants unfavorable action. The advisory opinion goes on to say that in **nearly all** (emphasis added) similar cases where Marines are found to have been driving under the influence of alcohol or driving while intoxicated, their names are removed from any selection list on which they appear.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, notwithstanding the comments contained in enclosure (), the Board finds the existence of an injustice warranting the requested relief. In this connection, the Board found that Petitioner should not be subjected to such a serious set back by one isolated incident in an otherwise outstanding career. In this regard it is important to keep in mind that no disciplinary action was undertaken. Normally, an individual being selected for Drill Instructor Duty must have an outstanding record. The Board concluded this Marine's record was outstanding enough to influence and convince CMC, MMEA-85 to waive the alcohol related incident of 6 December 1997 and approve the waiver. Petitioner now has almost 11 outstanding years of active duty. In reviewing the advisory opinion the Board noted that CMC advised that in **nearly all similar cases** (emphasis added), where Marines are found to have been driving under the influence of alcohol or driving while intoxicated, their names were removed from any selection list and concluded that this is one of those cases

where the Marine's name should not be deleted from the promotion list because of the absence of any aggravating circumstances and his outstanding record of service. Additionally, the Board considered the fact that President Clinton signed a law making the legal limit for driving while intoxicated 0.08. In order for the States to receive government transportation funds, this limit is thought to be low enough to determine intoxication. Accordingly, the Board recommends the following corrective action.

RECOMMENDATION:

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

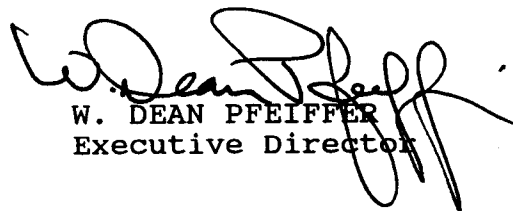
a. Petitioner was promoted to paygrade E-6 effective 1 May 1998.

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

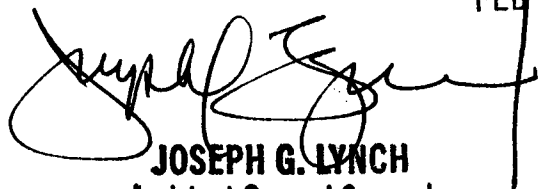
  
G. L. ADAMS  
Acting Recorder

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

  
W. DEAN PFEIFFER  
Executive Director

Reviewed and approved:

FEB 16 2001

  
JOSEPH G. LYNCH  
Assistant General Counsel  
(Manpower And Reserve Affairs)