



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

TRG  
Docket No: 2760-03  
29 May 2003



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 28 May 2003. 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, a copy of which is enclosed.

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 enlisted in the Marine Corps on 16 October 1995 at age 20. A counseling entry, dated 17 March 1998, states that you were arrested on 18 October 1997 and on or about 5 March 1998 on domestic violence charges. On 25 June 1998 and 7 June 1999, you were counseled concerning not being recommended for promotion to corporal because of pending civil charges for domestic violence, and then for being in a probationary status as a result of a civil conviction.

On 22 January 1999, you received nonjudicial punishment for failure to comply with a military protective order. The punishment imposed included a reduction in grade to private first class. You were released from active duty on 15 October 1999 with your service characterized as honorable. At that time, you acknowledged that you were not recommended for reenlistment and would be assigned an RE-4 reenlistment code.

In your application, you have submitted evidence that a California Court has ordered that your conviction be set aside and a plea of not guilty entered in your record, and that you

will graduate from college in 2003. You contend that since the civil conviction no longer exists, the reenlistment code should now be changed to RE-1A.

Concerning the action to dismiss your conviction, the advisory opinion points out that the Federal Government is not bound by any ruling of a state court and since the conviction occurred it is rightfully considered in determining your qualifications for reenlistment. The opinion also points out that the court order "does not relieve you of the obligations to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency, or contracting with the California State Lottery." The Board thus concluded that a record of two domestic violence incidents and an NJP for violating a protective order was sufficient to support the assignment of the Re-4 reenlistment code. Therefore, 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  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:  
1040  
MMER/RE  
MAR 28 2003

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

Subj: BCNR APPLICATION IN THE CASE OF FORMER [REDACTED]  
[REDACTED] SUBJ: RECODE

Encl: (1) [REDACTED] DD Form 149 of 16 Sep 2002

1. [REDACTED] service record has been reviewed and it has been determined that his reenlistment code of RE-4 was correctly assigned. The reenlistment code was assigned based on his overall record and means that he was not recommended for reenlistment at the time of separation.
2. [REDACTED] was honorably discharged on October 15, 1999 by reason of Completion of Required Active Service. A review of the administrative portion of his service record indicates that he was counseled concerning being arrested and charged with domestic violence and assault, not being recommended for promotion, and not being recommended for reenlistment because of commission of a serious offense. The disciplinary portion of the record shows that he received one nonjudicial punishment under the Uniform Code of Military Justice for failure to comply with a military protective order. It is also noted that on October 15, 1999 [REDACTED] signed an official service record book entry acknowledging assignment of the RE-4 reenlistment code.
3. We take note that pursuant to the notice from the Superior Court of California, County of Orange, [REDACTED] case was dismissed. The court document indicated he had either fulfilled the conditions of probation for the entire period of probation or been discharged prior to termination of the period of probation, was not serving a sentence for any offense, on probation for any offense, or charged with the commission of any offense. While the Superior Court of California may have dismissed the case, it must be stressed that the Federal Government is not bound by a State ruling. The conviction occurred and is rightfully considered in continuing to determine [REDACTED] qualifications for reenlistment and the validity of the RE-4. We specifically refer to the statement contained at the bottom of the Petition and Order Under P.C.1203.4/1203.4a. To wit: "This order does not relieve you of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office, for licensure by any state or local agency, or contracting with the California State Lottery."

4. After a review of all relevant information, this Headquarters concurs in the professional evaluation of [REDACTED] qualifications for reenlistment at the time of separation. Once a code is correctly assigned it is not routinely changed or upgraded as a result of events that occur after separation or based merely on the passage of time.

5. The enclosure is returned for final action.

[REDACTED]  
Head, Performance Evaluation  
Review Branch  
Personnel Management Division  
By direction of the Commandant  
of the Marine Corps