



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

SMS
Docket No: 10145-08
26 May 2009

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

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

Encl: (1) Case Summary
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a commissioned officer in the Marine Corps Reserve and former enlisted member of the Marine Corps, applied to this Board requesting to remove administrative remarks (page 11) service record entries dated 7 October 2002, and promotion to sergeant on 1 November 2002.
2. The Board, consisting of Ms. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] reviewed Petitioner's allegations of error and injustice on 19 May 2009, 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, advisory opinions, and applicable statutes, regulations and policies.
3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:
 - a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.
 - b. Petitioner's application was filed in a timely manner.
 - c. On 30 November 1998, Petitioner enlisted in the Marine Corps at age 18, served without incident with a primary military occupational specialty of machine gunner, and was promoted to corporal on 1 January 2001. On 28 August 2002, the Marine Corps Total Force System generated his cutting score as being 1663. On 7 October 2002, he signed an adverse page 11 service record entry which stated that he was counseled regarding deficiencies in his performance and conduct and advised that failure to take corrective action could result in disciplinary action or discharge. In rebuttal, he submitted a statement and requested that the page 11 service record entry be removed and that he be recommended for promotion. He also signed another page 11 service record entry dated

7 October 2007, in which he acknowledged being eligible for promotion to sergeant for the October to December 2002 promotion period, but was not recommended for promotion because of the previous adverse page 11 service record entry. The Headquarters Marine Corps promotion website published the active Marines, machine gunner, sergeant cutting score as being 1596 for November 2002. On 29 November 2002, he was honorably released from active duty due to completion of required active service and assigned an RE-1A reenlistment code. On 19 October 2006, he was honorably discharged from the Marine Corps Reserve due to expiration of obligated service.

d. Attached to enclosure (1) is an advisory opinion from Headquarters Marine Corps, Military Law Branch (JAM3), which states, in part, as follows:

...[Petitioner's] company commander made two adverse administrative entries (page-11) [sic] in [Petitioner's] service record book on 7 Oct[ober] 2002. The first entry counseled [Petitioner] for various deficiencies, including lack of accountability for armory issued items. The second entry notified [Petitioner] that he was not being recommended for promotion to sergeant...

...[Petitioner] challenges the factual basis for the page-11 and provides a letter from his former commander requesting that [it] be removed...[Petitioner's] request fails to provide a compelling factual basis for finding an error or injustice in the record. To the contrary,...his former commander, appears to have merely changed his mind about the decision he made to counsel [Petitioner] formally so as not to negatively affect [Petitioner's] current pursuit of a Marine Corps commission...

[Petitioner's] request should be denied...

e. Attached to enclosure (1) is an advisory opinion from Headquarters Marine Corps, Enlisted Promotion Section (MMPR-2), which states, in part, as follows:

...[Petitioner] requests a correction to his record to reflect the rank of sergeant (E-5) vice corporal (E-4)...

...[The page 11 entry dated 7 October 2002] validates that [Petitioner] was not recommended for promotion to the rank of sergeant for the

October 2002 through December 2002 promotion period. Additionally, [Headquarters Marine Corps JAM3 letter dated 28 January 2009] indicates [Petitioner's] request ... was denied...

...it is recommended [Petitioner's] record remain unchanged at this time...

f. In his application, Petitioner states in essence that he was discharged just days after the error and thought all corrective avenues had been exhausted until his former commander offered to write a statement.

g. Petitioner's former commander, Major B--- submitted an electronic message to the Board on 18 October 2008, which states, in part, as follows:

...With regard to the Page Eleven [sic] entry I made for [Petitioner] in 2002, I humbly request that it be removed, and that his promotion Non-Rec[ommendation] [sic] be reversed to "recommended" for promotion to Sergeant [sic] as of 20021101. The reason is that at the time, I had been Company Commander for a very short period, and based my decision on too few individuals to draw such an ominous conclusion. With hindsight being 20/20, my recent review of the same facts has made me regret the decision I made at the time to not recommend him for promotion. I believe that I made the wrong decision at the time and wish for it to be reversed. [Petitioner] is pursuing a commission in the Marines, and I feel the Non-Rec[ommendation] [sic] I made in haste at the time will adversely affect his chances...

h. Regulations authorize commanding officer's to make adverse page 11 service record entries on Marines for misconduct, substandard performance, confirmed incidents of alcohol abuse, or for administrative measures. Regulations further state that these entries require authentication by the commanding officer or a by direction signature of the commanding officer as well as acknowledgement by the Marine.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's requests warrants relief and finds that the adverse page 11 service record entry dated 7 October 2002, regarding deficiencies in his performance does not meet requirements established by regulations. In this regard, his commanding officer did not authenticate the entry. The Board also considers his commanding officer's requests to remove the adverse page 11 entry as well as his non-recommendation for promotion, and to retroactively promote him to sergeant. The Board further considers his honorable characterization of service, recommendation for reenlistment, no disciplinary actions, and notes that his cutting score exceeded the requirement for promotion to sergeant. Therefore, the Board finds that both page 11 service record entries dated 7 October 2002 should be removed and that the record be further corrected to show that he was promoted to sergeant on 1 November 2002.

RECOMMENDATION:

a. That Petitioner's naval record be corrected by removing both page 11 service record entries dated 7 October 2002.


b. That Petitioner's naval record be further corrected to show that he was promoted to sergeant on 1 November 2002.

c. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

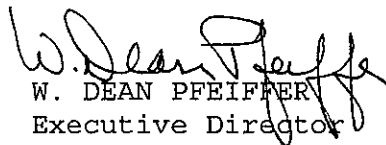
d. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

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.

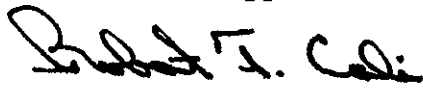
ROBERT D. ZSALMAN
Recorder


BRIAN J. GEORGE
Acting Recorder

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


W. DEAN PFEIFFER
Executive Director

Reviewed and approved:


7-9-09

ROBERT T. CALI
Assistant General Counsel
(Manpower and Reserve Affairs)