



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

BAN
Docket No: 07795-09
26 October 2010

[REDACTED]

[REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, 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 17 August 2010. 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 the evidence submitted was insufficient to establish the existence of probable material error or injustice.

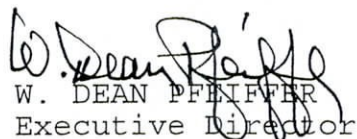
You enlisted in the Marine Corps and served without disciplinary incident until 11 January 2008, when you were convicted at a summary court-martial (SCM) of assault. You were awarded a sentence of forfeiture of two-thirds pay for one month, reduction to the grade of E-4 (suspended for six months), and restriction for a period of 45 days; however, the convening authority (CA) disapproved the restriction. Since your reduction in rate was suspended and your restriction was disapproved, the only remaining portion of the sentence for the Board to correct would be the imposition of forfeiture of two-thirds pay for one month. However, the CA at the time of the offense has the authority to set aside your SCM. Therefore, our office requested an opinion from the CA (BGen S---, USMC). The CA found no reason to reverse his original action or that any other administrative action be taken. He believed the court-martial and sentence were thoroughly reviewed, at the time of the incident, by him, the

executive officer and the sergeant major, for administrative errors and injustices. A copy of the CA's opinion was provided to you by our office and you were allowed 30 days in which to respond. In addition, our office received an advisory opinion from the Headquarters Marine Corps, Military Law Branch, Judge Advocate Division, (you were also provided a copy for your response), indicating that there was no legal error in the imposition of the SCM, and that you were afforded your full procedural rights, including the opportunity to consult with an attorney. Furthermore, the sentence was within the jurisdictional limitations for the SCM. The Board has no authority to consider claims of legal error at a court-martial, and must limit its review to determining whether clemency is warranted in the sentence.

Therefore, the Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your youth and the letter from the SCM officer on your behalf. Nevertheless, the Board concluded these factors were not sufficient to warrant granting you clemency, promoting you to staff sergeant, or removing your adverse fitness report. 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

Enclosures