



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 6204-98

29 July 1999

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

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

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

Encl: (1) DD Form 149 w/attachments  
(2) Case Summary  
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the United States Marine Corps filed enclosure (1) with this Board requesting that his record be corrected to show that he was not reduced from SSGT (E-6) to SGT (E-5).

2. The Board, consisting of Mr. Leeman, Mr. Mazza and Ms. Brown, reviewed Petitioner's allegations of error and injustice on 27 July 1999 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 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. Enclosure (1) was filed in a timely manner.

c. Petitioner reenlisted in the Marine Corps on 27 November 1996 for four years. In March 1997 he reported for duty as a recruiter. Subsequently, he was an unauthorized absentee from 12 to 28 June 1997 a period of about 16 days. A summary court-martial convened on 29 July 1997 and convicted him of the 16 day period of unauthorized absence. The court sentenced him to forfeiture of \$1,142 pay and a reduction in rate from SSGT to SGT. One half of the forfeitures was suspended for six months. Petitioner was reassigned to his military police duties and has served in an excellent manner since the court-martial.

d. Concerning the events which led up to his unauthorized absence Petitioner states, in part, as follows:

... I was scheduled to appear before the recruiting screening team on 21 Feb 96, however my father passed away on the evening of the 20th and I rushed home to Delaware on the same evening thereby missing the screening. I was somewhat surprised to find several months later that I had orders to recruiting despite missing the screening. Had I been able to attend the screening I didn't expect to be picked because I was going through a divorce at the time and the negative financial impact that comes along with it. ....

(I reported to) a small town which had 3 recruiters working there. The NCOIC was SSGT W... who was an EAD'r (Reservist on Active Duty). He had been passed over for E-7 too many times and was on his way out in 4 months, so naturally he had an attitude not only about recruiting but the Marine Corps as well. He did nothing at all to help any of us let alone me, a new recruiter who could have used help. ... none of us got along with him. He created a tension in the office unlike nothing I had ever seen, often times getting into shouting matches. He alone made it unbearable to come to work. At the same time, I had been separated from my wife for about a year and (a) half trying to finalize a divorce. It was complicated because we had a house together ... and also a lot of bills that we had accumulated in the 10 years we were married to that point, so despite trying to do my job with no assistance from the NCOIC and work on the divorce as well (as) being financially strapped it was difficult to say the least. Meanwhile work was worse than ever, SSGT (W) was driving 100 miles to work 1 one way each day and working for him was unbearable. We were failing as a station never making mission despite the other 2 recruiters being very good recruiters, in fact (one of the recruiters) was rookie of the year the previous year and meritoriously promoted but left with a double signed fitness report when his numbers declined .... (W) would tell me I could not go home at night until I set 4 "solid" appointments for the next day, being a new recruiter I had a lot of trouble doing this so I was always in the office until 9 or 10 at night often times calling people from my house. I told the Assistant Recruiter Instructor who visited ... in May that SSGT (W) was bringing us all down and he had to go, but unfortunately he stayed. Finally in June after yet another falling out with SSGT (W) and my personal problems I was flat out miserable like never before so I decided against my better judgment that I need to get away from it all. So I awoke the next

morning and drove home to Delaware to see my family, and I'm not ashamed to say that it was like getting out of prison ... I stayed home longer than I wanted to but it was difficult going back, even though I knew I made a monumental mistake it felt good to get away from my problems. ....

e. Petitioner states that the sentence imposed by the court-martial was too severe. He noted that no one interviewed the other recruiters as to the unbearable conditions. In addition he points out that he is aware of another case where a gunnery sergeant was involved with a female poolee, but only received nonjudicial punishment and a \$100 fine. He further points out that in his duties as a military policeman he has seen drunk drivers, adulterers and others with serious offenses who received a lessor punishment than he did. Finally, he states that the court-martial officer did not review his record but simply imposed the punishment required by the recruiting district commanding officer.

f. In support of his application, Petitioner has submitted a fitness report which shows he is still serving in an outstanding manner and that he was awarded the Navy and Marine Corps Achievement Medal. He has also submitted an extremely laudatory letter from a major in his chain of command who states that Petitioner's former commanding officer told him that Petitioner "had been judged too harshly and based upon the surrounding circumstances, the punishment handed down ... was way too severe. The major concludes that Petitioner has learned from his mistake and "has not missed a step in his march for excellence and his devotion to the Marine Corps."

#### CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. In reaching its decision, the Board notes that at time of his unauthorized absence Petitioner was a senior SSGT and a military policemen and believes that the commanding officer did not abuse his discretion when he decided to refer the charge to a summary court-martial. However, the Board also notes his excellent record both before and after the court-martial, the lack of recruit screening and the unique situation at the recruiting office. Given these factors, the Board believes that in retrospect, a sentence which included an unsuspended reduction in grade was too severe and it should now be reduced as a matter of clemency. Therefore, the Board concludes that the court-martial sentence should be changed to show that the reduction in rank was suspended for six months.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that the reduction in rank imposed at the 29 July 1997 summary court-martial was suspended for six months and that he has served continuously as a SSGT since 10 October 1993.

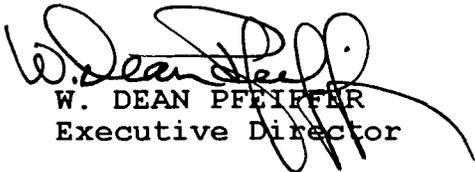
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder



ALAN E. GOLDSMITH  
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER  
Executive Director