



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 5726-97

6 October 1999

Dear [REDACTED]

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 5 October 1999. 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 dated 23 February 1998, a copy of which is enclosed, and your rebuttal to the opinion dated 5 August 1999.

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.

In reaching its decision the Board noted that you had six consecutive nonqualifying years, from 28 January 1986 to 27 January 1992, and another two years of nonqualifying service, from 28 January 1995 to 27 January 1997. These periods of inactivity would have made you noncompetitive for promotion. Majors who have twice failed of selection must be involuntarily separated from the Marine Corps Reserve after 20 years of commissioned service, unless they are selected for continuation to 24 years of commissioned service. The law precludes officers in your category from serving beyond 24 years. Although some errors may have been made in your case, it is clear that the length of service limitations in the law precluded you from qualifying for retirement. 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.

Although you are prevented by law from further commissioned service, there appears to be a remote possibility that you could enlist and earn additional qualifying years. If the Marine Corps

is not interested in this possibility, you might contact some other component such as the Air Force Reserve or National Guard.

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  
2 NAVY ANNEX  
WASHINGTON, DC 20380-1775

1800 IN REPLY REFER TO:  
MMSR-6B  
23 Feb 98

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

Subj: ADVISORY OPINION IN THE CASE OF [REDACTED]

Ref: (a) Title 10, U.S. Code, Section 6389  
(b) Title 10, U.S. Code, Section 14701  
(c) MCO P1900.16E (MARCORSEPMAN)

1. We have been asked to provide an advisory opinion concerning [REDACTED] status in the Marine Corps.
2. [REDACTED] was twice failed of selection for promotion to Lieutenant Colonel and was given an opportunity to resign, be placed on the Inactive Status List (ISL), or be discharged, no later than 30 June 1994.
3. On 30 June 1994, [REDACTED] was placed on the ISL due to no response from him. Placement on the ISL should have precluded him from drilling with a unit. He should have remained on the ISL indefinitely or been discharged due to his second failure. However, [REDACTED] was inadvertently returned to an active status in the Reserves by the Marine Corps Reserve Support Command, and was allowed to drill. [REDACTED] earned additional retirement points thereby allowing him to obtain 17 qualifying years of service.
4. [REDACTED] was then selected for continuation to 24 years of commissioned service by the Fiscal Year 1998 Reserve Lieutenant Colonel Promotion board. On 9 June 1997, he completed 24 years of commissioned service. As delineated in reference (b), an officer is required to retire if eligible, or be involuntarily discharged at the completion of such service.
5. On 28 October 1997, [REDACTED] was sent another Status letter and given an opportunity to request resignation, Honorary Retirement, or be involuntarily discharged. [REDACTED] was not eligible for a Reserve retirement because he did not meet the prerequisite 8 years in a Reserve component as stipulated in reference (c). [REDACTED] requested honorary retirement, and was transferred to the Honorary Retired List effective 1 January 1998.

Subj: ADVISORY OPINION IN THE CASE OF [REDACTED]  
[REDACTED]

6. Regretfully, based on the aforementioned, we do not support  
[REDACTED] request for correction of his record.



J. P. RATHBUN, JR.

Head, Separation and  
Retirement Branch

By direction of the Commandant  
of the Marine Corps