



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

TJR
Docket No: 7884-98
24 September 1999

[REDACTED]

Dear [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 14 September 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, a copy of which is attached.

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.

The Board found you reenlisted in the Marine Corps on 21 March 1990 after nearly 12 years of prior honorable service.

Your record reflects that in 1992 and again in 1995 you were placed on a weight control program in accordance with the Marine Corps' weight control and military appearance manual. The record also reflects that you exceeded the maximum allowable weight standards on both occasions. Subsequently, you were notified of pending administrative separation action by reason of convenience of the government due to failure to conform to the Marine Corps' weight control requirements. On 3 October 1995 the discharge authority directed your commanding officer to honorably discharge you by reason of failure to conform to weight standards. On 30 October 1995 you were so discharged.

The Board, in its review of your entire record and application, carefully weighed all potentially mitigating factors, such as your prior honorable service and your contentions that you would like your discharge for weight control failure set aside and to

be placed on the retired list. The Board further considered your specific contention that your discharge was improper because your assignments to weight control programs were based on incorrect height measurements which were taken by corpsmen, and all of the other contentions set forth on the attachment to your application. However, the Board concluded these factors and contentions were not sufficient to warrant setting aside your discharge or placing you on the retired list. The Board noted that your discharge was correctly based on your weight and height measurements and substantially concurred with the comments contained in the advisory opinion, which noted, in part, as follows:

Reference (a) does not prohibit corpsmen from taking and recording weight for height measurements.... the mechanics of measuring weight for height can be conducted by a corpsman.... the CHCP's signature on the medical evaluations validates all measurements and findings regardless of who took the actual measurements.

In both weight control assignments, (Member) was overweight, despite his disputed height claims. with regard to his second weight control assignment, he stated there should be a "margin of error" that, in his opinion, correlated to a perceived deviation in the recorded height - again, the dispute overall actual vice recorded height. This position is flawed for two reasons: First - there is no precedence or policy guidelines regarding a variance or error factor when measuring weight for height. Second - his recorded weight in both cases exceeded the maximum allowable standards regardless of the actual or recorded heights listed.

(Member's) weight control assignments were in accordance with the reference, and therefore his separation due to failure to conform to weight standards was valid.

The Board also noted your contention that you elected to present your case to an administrative discharge board (ADB), but no ADB was ever convened. You submitted a signed form which appears to support your contention. However, that form is a part of your service record and shows that you waived the right to an ADB. A copy of this form is enclosed.

The Board also concluded that even if you did desire an ADB, failure to grant your request was not prejudicial since no ADB would have recommended retention. The Board noted the following comments from the battalion commander's letter of 16 August 1995 in which he recommended discharge:

During face-to-face interviews with me SNM has admitted to his lack of motivation to achieve his weight goal. He also stated that his total, focused energies are to leave the Marine Corps as soon as possible and that he is using his overweight problem as a vehicle toward discharge. He apologized for having placed the burden on the command to discharge him, but all he desires is to return to this wife in Pennsylvania.

Given all the circumstances in your case, the Board concluded your discharge was proper as issued and no change is warranted. 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



UNITED STATES MARINE CORPS
MARINE CORPS COMBAT DEVELOPMENT COMMAND
QUANTICO, VIRGINIA 22134-5001

IN REPLY REFER TO:
C462
1500
17 Mar 99

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

Subj: BCNR APPLICATION IN THE CASE OF [REDACTED]

Ref: (a) MCO 6100.10B, Weight Control and Military Appearance

1. After reviewing the subject BCNR application, the following comments are provided:

a. Reference (a) does not prohibit corpsmen from taking and recording weight for height measurements.

b. The reference states that the responsibility of the CHCP is to "...certify a Marine's ability to participate in physical training and/or recommend a diet, and if required, to return the Marine to acceptable military appearance." In essence, the mechanics of measuring weight for height can be conducted by a corpsman, whereas the CHCP provides a medical evaluation to determine a viable weight control program recommendation -- these procedures were followed in [REDACTED] weight control assignments. Furthermore, the CHCP's signature on the enclosed medical evaluations validates all measurements and findings regardless of who took the actual measurements.

b. In both weight control assignments, [REDACTED] was overweight, despite his disputed height claims. With regard to his second weight control assignment, he stated there should be a "margin of error" that, in his opinion, correlated to a perceived deviation in the recorded height - again, the dispute over actual vice recorded height. This position is flawed for two reasons: First - there is no precedence or policy guidelines regarding a variance or error factor when measuring weight for height. Second -- his recorded weight in both cases exceeded the maximum allowable standards regardless of the actual or recorded heights listed in the appeal enclosures.

2. [REDACTED] weight control assignments (1992 and 1995) were in accordance with the reference, and therefore his separation from the Marine Corps due to failure to conform to weight standards was valid.

3. POC at T&E Div is LtCol Pappa at DSN 278-4054.

J. B. HULICK
Head, Training Programs Branch

449471 [REDACTED] 4100Y11 CHCSO 11/28/81 [REDACTED]

IF YOU HAVE SIX OR MORE YEARS NAVAL SERVICE, IN ADDITION TO THE RIGHTS SET FORTH ON THE PRECEDING PAGE, YOU HAVE THE RIGHT TO REQUEST A HEARING BEFORE AN ADMINISTRATIVE DISCHARGE BOARD. IF YOU REQUEST A HEARING BEFORE SUCH A BOARD, YOU WILL BE AFFORDED THE FOLLOWING RIGHTS:

1. To appear personally before such a board or be represented by counsel if confined by civil authorities.
2. To be represented by appointed military counsel (You may also request a specific judge advocate of your choice, and he/she will represent you if the CG declares that he/she is available).
3. To be represented by civilian counsel if you desire but at your own expense.
4. To challenge voting members of the board and the legal advisor, if any, for cause only.
5. To testify in your own behalf, subject to the provisions of Article 31, UCMJ (compulsory self-incrimination prohibited.)
6. At any time during the proceedings you or your counsel may submit written or recorded matter for consideration by the board.
7. You or your counsel may call witnesses on your behalf.
8. You or your counsel may question any witnesses who appear before the board.
9. You or your counsel may present argument prior to the board's closing the hearing for deliberations on findings and recommendations.
10. Upon written request, to be provided a copy of the report of the board and the endorsements thereon.
11. Failure to appear without good cause at a hearing constitutes waiver of your right to be present at the hearing.

1. I ~~do not~~ (initials) do not (initials) request a hearing before an Administrative Discharge Board.

[Signature]
(Respondents Signature)

20-00-1-10-1
ENCLOSURE