



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

LCC:lc
Docket No. 1325-02
12 September 2002

From: Chairman, Board for Correction of Naval Records

To: Secretary of the Navy

~~_____~~
Review of naval record

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

Encl: (1) DD Form 149 w/attachments
(2) Statement from the Recruiter
(3) CMC memo 1400/3, MMPR-2, 15 Apr 02
(4) Subject's microfiche record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed written application, enclosure (1), with this Board requesting, in effect, that the applicable naval record be corrected to show he was promoted to paygrade E-4 effective 1 September 2000 and entitled to remedial consideration for promotion to E-5.

2. The Board, consisting of Messrs. Neuschafer, Pfeiffer, and Ms. Davies reviewed Petitioner's allegations of error and injustice on 6 August 2002 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. Prior to filing enclosure (1) with this Board, Petitioner exhausted all administrative remedies afforded under existing law and regulations within the Department of the Navy.

b. Petitioner served on active duty in the Marine Corps during the period 28 August 1990 to 27 August 1994 and received an honorable discharge in the grade of lance corporal, (E-3).

c. He then enlisted in the Army and served on active duty from May 1997 to May 2000 during which time he earned the Army Commendation Medal and a promotion to sergeant, (E-5). Petitioner was honorably discharged on 19 May 2000.

d. Immediately after his discharge from the Army Petitioner began enlistment processing in order to enter active duty as a Marine. During processing his recruiter told him that he would be enlisted as a lance corporal, (E-3) and be immediately eligible for promotion to corporal, E-4, enclosure (2).

e. Petitioner enlisted in the Marine Corps for 4 years of active duty on 28 August 2000 under the provisions of the Prior Service Enlisted Program (PSEP) and was given a date of rank of 2 June 1997 as a lance corporal, (E-3). Under the provisions of the PSEP service members are enlisted in paygrade E-3 and must wait six months for promotion to paygrade E-4. Service members enlisting under this program are required to sign a Statement of Understanding (SOU).

f. Since Petitioner had a previous tour of active duty with Marines and had been assigned a date of rank of 2 June 1997 his recruiter told him he would not have to wait six months to be eligible for promotion to paygrade E-4. Consequently Petitioner was not given an SOU for signature. A statement from the recruiter is at enclosure (2).

g. In order for enlisted Marines to be promoted to paygrades E-4 or E-5 they must meet a cutting score. The cutting score for 1 September 2000 cycle for MOS 6672 for promotion to paygrade E-4 was 1531. Petitioner's composite score was 1640 which exceeded the cutting score.

h. In correspondence attached as enclosure (3), the office having cognizance over the subject matter involved in Petitioner's application recommended denial, commenting that Petitioner enlisted under the PSEP and was not eligible for promotion to paygrade E-4 until he met the 6 months active duty requirement.

CONCLUSION:

Upon review and consideration of all the evidence of record, notwithstanding the comments contained in enclosure (3), the Board finds the existence of an injustice warranting the

requested relief. There is no doubt that because of his outstanding record of achievements Petitioner could have reenlisted in the Army and retained his rank of sergeant. Instead motivated by a strong desire to return to the Marine Corps and in reliance upon the express promise of a Marine Corps recruiter that he would be eligible for immediate promotion to corporal Petitioner, in good faith, enlisted in the Marine Corps as a Lance Corporal. To deny him the promotion that he was promised and which he earned is clearly unjust. The Board concluded that under the facts of this case, fundamental fairness requires that Petitioner's record be corrected in such a manner that enables him to receive the benefits that were promised to him. Petitioner at time of his enlistment had 3 years prior active duty in the Marine Corps and based on assigned date of rank had 3 years, 2 months, and 26 days in grade. Consequently the Board has determined that the Petitioner should have been promoted to paygrade E-4 effective 1 September 2000.

Accordingly, the Board recommends the following corrective action.

RECOMMENDATION:

That Petitioner's naval record be corrected, where appropriate, to show that:

a. Petitioner was promoted to paygrade E-4 effective 1 September 2000.

b. Petitioner be given remedial consideration for promotion to paygrade E-5.

c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

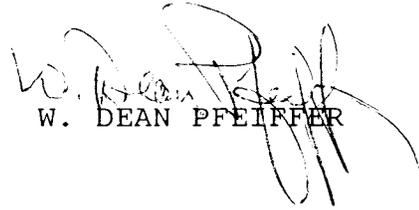
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Boards proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


G. L. ADAMS
Acting Recorder

Docket No. 1325.02

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


W. DEAN PFEIFFER

Reviewed and approved: 

