



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

BJG
Docket No: 3476-99
4 October 1999

CWO [REDACTED] JR USMC RET
[REDACTED]
[REDACTED]
[REDACTED]

Dear Chief Warrant O [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. You requested a commission as an unrestricted officer of the Regular Marine Corps.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 29 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 opinions furnished by the Marine Corps Recruiting Command, dated 3 August 1999, and Headquarters Marine Corps (HQMC) dated 9 and 19 August 1999, copies of which are attached. They also considered your letter dated 13 September 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 this connection, the Board substantially concurred with the comments contained in the advisory opinions dated 9 and 19 August 1999.

The Board found that you were not treated as ineligible to be considered for a limited duty officer (LDO) appointment on account of your age, as you were considered by the Fiscal Year 1996 LDO Selection Board. They observed that title 10, United States Code, section 533 deals with service credit for officers receiving original appointments, not eligibility to receive such appointments. You say an officer at HQMC (Manpower Plans, Programs and Budgeting Branch (MPP-35)) told you members of the LDO selection board had advised him that you were not selected because of the statutory age restriction of title 10, United States Code, section 532 (a)(2). If this is, in fact, the reason you were not selected, they found nothing objectionable about that reason, noting that the statutory age restriction was not waivable by the Department of the Navy. Since they were unable to find that you should

have been selected for an LDO appointment, they had no basis to find that you should have received a commission as an unrestricted officer.

In view of the above, 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

3476-99



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:

1070
MCRC (OA)
3 Aug 99

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

Subj: BCNR APPLICATION IN THE CASE OF [REDACTED]

1. The subject documentation is returned with "no opinion" from the Marine Corps Recruiting Command.
2. Under current policy, and at the time [REDACTED] submitted his application, the Limited Duty Officer Program is controlled by the Commandant of the Marine Corps (MMOA-3) and should be directed to that office code for opinion.
3. The Marine Corps Recruiting Command is only responsible for the preparation of a new Acceptance and Appointment Record after selection to Limited Duty Officer has been approved by the Commandant of the Marine Corps, submitted by the President of the United States and confirmed by the U. S. Senate. The Marine Corps Recruiting Command was not involved in the policy decisions that affected the aforementioned policy that [REDACTED] discusses.
4. POC CWO [REDACTED]

[REDACTED]

CWO3, USMC
Head, Officer Accessions
Marine Corps Recruiting Command



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

3476-49

IN REPLY REFER TO:

1400

MPP-34

AUG 11 1999

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

Subj: BCNR APPLICATION IN THE CASE OF CW02 [REDACTED]
JR [REDACTED]

Ref: (a) SECNAVINST 1210.6A
(b) ALMAR 116/95 (MCBUL 1040)

1. CW02 [REDACTED] was made eligible to apply for the FY96 LDO Board through a CMC waiver of the minimum warrant officer service requirement of 6 years. This waiver was granted by CMC specifically for the FY96 LDO Selection Board. This opportunity was one that was not made to the general warrant officer population, but specifically to those MOSs that were being eliminated pursuant to the Restricted Officer Program Study (ROPS). This was seen as a compromise so that the opportunity for continued service was opened up to as many warrant officers in the affected MOSs as possible. The warrant officer service waiver did not bestow a right to be selected upon CW02 [REDACTED]. The opportunity to apply for a lateral move into a structured MOS was also presented to CW02 [REDACTED]. He chose to be retired if non-selected for LDO.

2. According to his application, CW02 [REDACTED] had only 5 years 4 months as a warrant officer as of 1 Jun 95. The board met 6 Jun 95. There are many possible reasons for the board's decision that [REDACTED] was not fully qualified for selection. A possible explanation is that his individual qualifications were insufficient, or that he was unwilling to make a lateral move. He is correct in asserting that he did not meet the age requirements set forth in reference (a), and that he did not seek a waiver of that requirement. This requirement was due to the overall goal of converting as many of these warrant officers to unrestricted officers as possible. The records for the FY96 LDO selection board are missing. The reasons for his particular non-selection are unknown. As such there is no basis in fact or law establishing that he was unjustly denied selection to LDO.

3. [REDACTED] reference to 10 USC §533 is erroneous in that constructive service credit was not a factor to be

considered by the board, with the following exception: Reference (b) sets forth the time in grade/appointment grade scheme. If he were to have been selected, it would have been to the grade of first lieutenant because he was a CWO2 with at least 1-year time in grade. His assertion that he was not selected because the board did not consider his "special qualifications" and grant him constructive credit has no basis in fact or law.

4. POC is [REDACTED] (MPP) at [REDACTED]

[REDACTED]

Col, USMC
Head, Manpower Plans,
Programs and Budgeting Branch