



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

BJG

Docket No: 10084-06
2 May 2008

[REDACTED]

[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, in effect, that your removal from the Fiscal Year (FY) 2006 Line Captain Promotion List be set aside and that you be reinstated to the list (with implied requests to remove documentation of your removal from the list and remove both your deemed failure of selection by the FY 2006 Line Captain Selection Board and your actual failures of selection by the FY 2007 and 2008 Line Captain Selection Boards); or if this is not approved, that you be considered by the FY 2008 Line Captain Selection Board as having failed of selection to captain only once (this selection board had adjourned before your case was considered) and that you be granted a special selection board for the FY 2007 Line Captain Selection Board (implying a request to remove your failure of selection by the FY 2007 Line Captain Selection Board). Finally, you requested that your statement of 1 June 2005 to the Chief of Naval Personnel be added to your record with the Chief of Naval Operations (CNO) Action Memo dated 22 December 2005. This last request was not considered, as you have not exhausted your administrative remedies by submitting your request to the Navy Personnel Command (NPC).

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 1 May 2008. Your allegations of error and

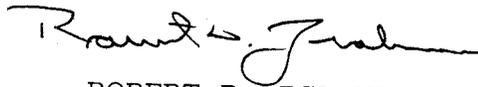
injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions from the NPC Officer Career Progression Branch, dated 28 December 2006, and the NPC Assistant Legal Counsel, dated 28 March 2007, copies of which are attached. The Board also considered your counsel's letters dated 15 December 2006 and 4 July 2007, each with enclosure.

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. The Board found you were able to respond effectively to the investigation report, although a complete copy of the report had not been provided to you. The Board found it was to your advantage that Tab A to the CNO Action Memo, the investigation report with endorsements, was not filed in your record with the CNO Action Memo. The Board considered the error, if any, in having allowed the FY 2007 Line Captain Selection Board to review your letter to the promotion board after the convening date was harmless as it was in your favor. In concluding you were not prejudiced, the Board particularly noted the statement, in paragraph 4 of the advisory opinion dated 28 December 2006, that the letter arrived "prior to the completion of the initial reviews and briefs of the In and Above Zone records." 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,



ROBERT D. ZSALMAN
Acting Executive Director

Enclosures

Copy to:

