



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

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BJG

Docket No: 10583-06

19 May 2008

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This is in reference to your letter dated 24 November 2006 with enclosure, seeking reconsideration of your previous application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552. Your previous case, docket number 7199-06, was denied on 7 September 2006.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 15 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, and your prior case file. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 14 September 2007, a copy of which is attached. The Board also considered your rebuttal letter dated 16 October 2007 with enclosures and electronic mail dated 13 May 2008.

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 report of the PERB.

The Board recognized it is possible the contested fitness report was adversely affected by the 15 June 2005 result of the command climate investigation, which concluded you should not be relieved for cause, as well as the numerous other matters you cited that could have caused the reporting senior (RS) to be biased against you. However, the Board was unable to find that the report was, in fact, affected by any of these matters. In this regard, the Board particularly noted that the investigation concluded you should receive a nonpunitive letter of caution for "poor judgment" during the reporting period in question, and that your RS should "consider marking and commenting on [your] above cited poor judgment"; that your RS nevertheless did not comment on this, nor did he give you an adverse mark in judgment; that your RS assigned you a "D" (fourth best of seven possible marks) in judgment; and that the reviewing officer concurred with the appraisal the RS gave you. In view of the above, your application has again 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

Enclosure