



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

JSR
Docket No: 2424-08
15 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, removing the fitness report for 3 November to 31 December 2006, replacing it with the "not observed" fitness report for 4 November to 31 December 2006 that is already in your record, and removing the fitness report for 1 January to 21 May 2007.

It is noted that the Commandant of the Marine Corps (CMC) has directed removing the contested report for 3 November to 31 December 2006, together with the uncontested report for 1 January to 5 March 2007.

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. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 5 March 2008, a copy of which is attached.

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.

The Board substantially concurred with the report of the PERB in concluding removal of the uncontested fitness report for 1 January to 5 March 2007 was warranted.

The Board found the fitness report for 1 January to 21 May 2007 should stand, though it disagreed with the PERB position that the removal of the report for 3 November to 31 December 2006 nullified your objection to not having been counseled before your mark in section G.2 ("Decision Making Ability") was dropped from "C" (fifth best of seven possible marks), in the removed report, to "B" (sixth best) in the remaining contested report. However, the Board found no requirement for counseling before lowering a fitness report mark from "C" to "B." Further, the Board was unable to find you were given no form of feedback that might have alerted you to the possibility that you could be marked down in "Decision Making Ability." The Board likewise found no requirement to justify the marks of "B." The Board found no inconsistency between these marks and the reporting senior (RS)'s narratives in sections C ("Billet Accomplishments") and I (RS's "Directed and Additional Comments"); and it found none between the mark of "B" in section G.1 ("Professional Military Education") and your having completed the Staff Noncommissioned Officer (SNCO) Advance Distance Education Program in 2005 (outside the reporting period), the SNCO Career Course in 2006 (also outside the period) and the Maintenance Management Course in March 2007. Finally, the Board found the report for 1 January to 21 May 2007 was not identical to the removed preceding report, submitted by the same RS and a different RO, in that the mark in section G.2 was lower, the sections C and I narratives were different, section K.3 (RO's "Comparative Assessment") had a mark while the preceding report did not, and section K.4 (RO's comments) had narrative while the preceding report did not.

In view of the above, your application for relief beyond or other than that effected by CMC 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,

A handwritten signature in cursive script, appearing to read "Robert D. Zsalmán".

ROBERT D. ZSALMAN
Acting Executive Director

Enclosure