



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

HD:hd
Docket No. 02806-08
8 August 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 restoring your original lineal number of 09531800, reinstating your original pay grade O-3 (lieutenant) date of rank of 1 May 2003, allowing you to be considered for promotion to lieutenant commander (pay grade O-4) with your original year group of 1999, awarding you back pay from 12 September to 30 September 2006, and granting you consideration by a special selection board.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 7 August 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 opinion furnished by the Navy Personnel Command dated 21 May 2008, a copy of which is attached. The Board also considered your letter dated 13 June 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 advisory opinion.

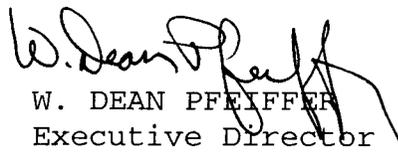
The Board was unable to find legislative intent, concerning entry grade credit (EGC), that a former line officer subsequently commissioned into a staff corps may not be made more junior than that officer was as a line officer. The Board found you were appointed to the Judge Advocate General's Corps (JAGC) under title 10, United States Code, section 531, not section 533(f), so Department of Defense Directive 1312.3 was not applicable to your case, and you did not have to maintain the same grade and date of rank you held before your appointment into the JAGC. The Board noted that Chief of Naval Operations Instruction (OPNAVINST) 1120.11 indicates that under certain circumstances not applicable to you, the 48-month EGC maximum may be waived to permit appointment as a lieutenant commander. If you were incorrectly awarded constructive credit for legal education while you were on active duty or in an active status, the Board found this would be an error in your favor. The Board found no requirement for the Navy to have the same EGC policies as other services. The Board found your date of rank as a JAGC officer was not the result of adjusting a date of rank previously held, so the authorities you cited concerning date of rank adjustment were inapplicable. Finally, the Board was unable to find it was improper for your JAGC commission to be withheld pending the results of your bar examination, noting that paragraph 8.b.(2) of OPNAVINST 1120.11 indicates a prerequisite is "official notification of passing the bar examination."

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

Enclosure