



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

JRE

Docket No. 03490-08

14 August 2009

Dear [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, further consideration of the denial of your request for removal of a fitness report from your Official military Personnel File (OMPF), and a new request that certain documents and references specified in your application be removed from your OMPF, and that your name be returned to the list of officers to be promoted to lieutenant colonel for fiscal year 2007 (FY 07), or in the alternative, that you be accorded a special selection board. The Board did not reconsider your original application as you did not submit new material evidence or other matter that was not reasonably available to you at the time of your initial application.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 9 July 2009. 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 Director, Manpower Management Information Systems Division, Headquarters, United States Marine Corps, dated 11 August 2008, a copy of which is attached, and your response thereto.

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 concerning the filing of documents in your OMPF and the removal of your name from the FY-07 lieutenant colonel selection list.

The Board concluded that the documents in question were filed in your OMPF in substantial compliance with governing directives, and that you have not demonstrated that the presence of any of the documents in your record resulted in material error or injustice. The Board noted that several of the documents were filed in response to matters you raised in rebuttals to other records that had been referred to you for review and possible comment. The Board did not believe that any useful purpose would have been served by the type of serial referral/rebuttal process that you imply should have occurred in your case. In addition, the Board was not persuaded that law enforcement records and information concerning your mental health were improperly filed in your OMPF.

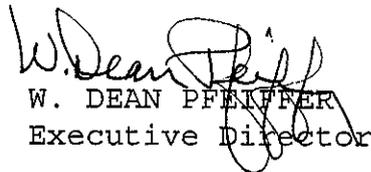
With regard to the issue of whether you attempted to commit suicide or merely made a suicidal gesture, the Board concluded that there is no material difference between a suicide attempt and a gesture in your case, as the outcome of your case would not have been affected by a different characterization of your actions. It appeared to the Board, however, that you did not intend to end your life when you took an overdose of medication on 28 March 2006. In this regard, it noted you called a mental health provider to report the overdose and then called for help from your co-workers. In addition, the medication you take is not particularly lethal, and the exact amount of that medication you took is unknown.

The Board concurred with the opinion of the Commandant of the Marine Corps, who advised the Secretary of the Navy in correspondence dated 21 September 2006, in effect, that your suicidal gesture, while indicative of a serious illness, raised significant questions about your ability and capacity to perform as a lieutenant colonel, and that the determination that you were fit for full duty notwithstanding your mental disorder was not equivalent to a finding that you were qualified for promotion. The Board was unable to conclude that the Secretary erroneously or unjustly removed your name from the FY 07 lieutenant colonel selection list, or that you should be accorded promotion consideration by a special selection board.

In view of the foregoing, 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