



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

HD:hd
Docket No. 03835-08
8 January 2009

[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 removing the original fitness report for 1 February to 24 May 2002 and filing in its place the supplemental report for the same period. You also impliedly requested removing your failures of selection by the Fiscal Year 04 and 05 Active Staff Lieutenant Commander Selection Boards, setting aside your release from active duty on 19 February 2005 by reason of the failures of selection for promotion, and restoring you to active duty.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 8 January 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 opinions furnished by the Navy Personnel Command dated 5 and 30 June and 29 July 2008, copies of which are attached. The Board also considered your letter dated 3 December 2008 with enclosure.

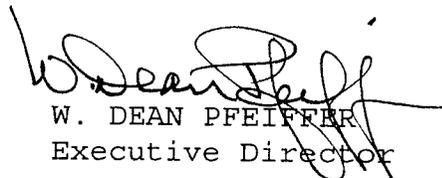
After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially

concluded with the comments contained in the advisory opinions. The Board found the reporting senior's (RS's) letter of 10 December 2007, forwarding the supplemental report, did not establish that the supplemental report was more fair and accurate than the original, nor did it not support filing the supplemental material in your record with the original report notwithstanding its submission over two years after the pertinent reporting period. Since the Board found no defect in your performance record, it had no grounds to remove either of your active duty failures of selection for promotion or set aside your release from active duty. 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.

Although the Board voted not to file the supplemental report in your record, you may submit the reporting senior's letter and the supplemental report to future selection boards.

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

Enclosures