



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

JSR
Docket No: 5418-08
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 that the date of rank and effective date of your promotion to chief warrant officer 2 (CWO2) be changed from 29 November 2006 to 1 August 2005, and that all documentation of the termination of administrative separation proceedings and delay of your promotion to CWO2 be removed from your naval record.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 2 October 2008 and concluded deliberations 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 from Headquarters Marine Corps (HQMC) dated 30 June, 6 August and 24 October 2008, copies of which are attached, and your letter dated 22 September 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 dated 30 June 2008. Concerning your objection that your promotion was delayed beyond 90 days after final action in your criminal case, the Board noted that the delay of your promotion was not based solely on the proceedings in state court, but also on the disposition of your case by military authorities. The Board observed that Secretary of the Navy Instruction (SECNAVINST) 1412.9B of 7 February 2006, enclosure (1), paragraph 13.f(4) states "A promotion to the grade of CWO2 may not be delayed more than 6 months after the date the officer would have otherwise been promoted. CMC [Commandant of the Marine Corps] may ratify and extend this period of delay for good cause." This provision did not appear in the previous version of the instruction, SECNAVINST 1412.9A. The Board found it was 2 February 2006, five days before the issuance of SECNAVINST 1412.9B, when your promotion, projected for 2 August 2005, had been delayed by six months. Even if the six-month provision of SECNAVINST 1412.9B is considered applicable to the delay in your case, the Board noted that on 12 October 2005, before your promotion had been delayed for six months, HQMC, acting on behalf of CMC, notified you of further delay of your promotion. Having found no illegality in the delay of your promotion, the Board was likewise unable to find the Marine Corps took an unreasonably long time to determine your fitness for promotion. Finally, the Board found it unobjectionable that your CWO2 date of rank/effective date was adjusted to 29 November 2006, the date of termination of administrative separation proceedings in your case. 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