



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

JSR
Docket No: 7414-08
4 September 2008

[REDACTED]

[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 removal of the fitness report for 6 April to 31 May 2006 and all documentation of your removal from the Fiscal Year (FY) 2007 Lieutenant Colonel Promotion List; reinstatement to that promotion list and promotion to lieutenant colonel with a date of rank and effective date of 1 January 2007; removal of your deemed failure of selection by the FY 2007 Lieutenant Colonel Selection Board; and, by implication, removal of your failure of selection by the FY 2009 Lieutenant Colonel Selection Board.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 4 September 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 from Headquarters Marine Corps (HQMC) dated 21 April 2008 and the report of the HQMC Performance Evaluation Review Board (PERB) dated 30 July 2008, copies of which are attached, and your counsel's letter dated 28 August 2008.

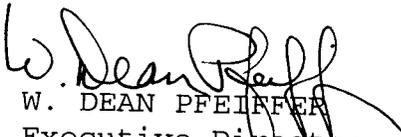
After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion and the report of the PERB.

Although the fitness report at issue did not expressly state you were relieved of command, the Board noted that the reporting senior (RS) did state, in section I ("Directed and Additional Comments"), that you were "not qualified to command" and that the RS "would not allow [you] to lead Marines in [the RS's] command in the future." The Board was unable to find your primary duty was not "future operations officer" as shown in section A, item 4 of the fitness report. Finally, the Board found the provisions of Chief of Naval Operations Instruction (OPNAVINST) 3750.R6 regarding the concept of privilege of information adduced in aircraft mishap board proceedings did not excuse your deceptions alleged in the contested report.

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

Copy to:
