



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

BJG

Docket No: 8799-08

30 January 2009

[REDACTED]

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 removing documentation of your conviction of 31 May 2006 by a summary court-martial and the fitness report for 31 December 2005 to 12 July 2006. Your request to set aside the conviction was not considered, as the Board for Correction of Naval Records is not authorized to consider such requests. However, the Board did consider reducing your sentence as a matter of clemency.

A three-member panel of the Board, sitting in executive session, considered your application on 27 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 opinion from the Headquarters Marine Corps (HQMC) Military Law Branch, Judge Advocate Division (JAM5), dated 24 July 2008 with enclosures, and the report of the HQMC Performance Evaluation Review Board (PERB), dated 12 September 2008, copies of which are attached.

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 from JAM5 and the report of the PERB. The Board found your sentence was appropriate to the offense involved. 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

Enclosures