



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

JSR
Docket No: 10007-08
6 November 2008

[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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 6 November 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 report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 14 October 2008, a copy of which is attached, and your revised letter of 21 October 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 report of the PERB.

Specifically regarding the contested fitness report for 1 October 2005 to 5 July 2006, the Board noted that the order at enclosure (4) to your application concerned recruiting probation. The Board was unable to find you should have been put on recruiting probation before your relief as area staff noncommissioned officer in charge (ASNCOIC) since your relief

was not based entirely on failure to make recruiting mission. The Board was unable to find that you were not given a chance to respond to the allegation you had not made your recruiting mission before it appeared in your fitness report; nor could it find an extra stipulation was added to the mission in the final days of the recruiting period, that you did not learn you were considered to have failed to make mission until 6 July 2006, or that the conclusion you had failed to make mission was based on erroneous data. The Board found it was a harmless error that the reporting senior (RS) mentioned the alleged failure to make mission in section C ("Billet Accomplishments") of the fitness report. The Board found section A, item 6a ("Commendatory Material") was correctly marked because you received a commendation. The Board was unable to find section A, item 6b ("Derogatory Material") should have been marked, as it was unable to find you were the subject of derogatory material or incident reports received by the RS from outside the reporting chain or from within the reporting chain above the RS level during the reporting period. The Board found the reviewing officer and third sighting officer adequately addressed the issues you raised. While the Board did not condone the late submission of the fitness report in question, it was unable to conclude this invalidated the report, since it could not find your ability to defend yourself was prejudiced. The Board found it was proper for the RS to mention the service record page 11 counseling entry for misuse of a government computer, as this was part of the reason for your relief as ASNCOIC. Finally, concerning the other Marines of your command whom you asserted to have committed misconduct without receiving a disciplinary action or page 11 counseling entry, the Board was unable to find their circumstances were substantially identical to yours.

Since the Board was unable to find your change of duty was unwarranted or improperly effected, it could not find the contested fitness report for 1 October 2006 to 4 January 2007, documenting your performance of your new duty as a canvassing recruiter, was invalid.

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