



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

JSR  
Docket No: 10449-08  
23 January 2009

[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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 23 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 reports of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 27 October 2008 and 13 January 2009, copies of which are attached, as well as your letter dated 19 December 2008 with enclosures and your e-mail dated 20 January 2009.

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 reports of the PERB.

The supporting statements you provided, from the reporting senior (RS), [REDACTED] did not persuade the Board that the contested fitness

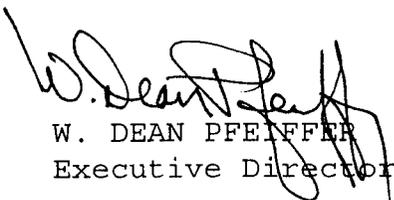
report was either factually inaccurate or unfair in its evaluation of your performance. The Board was unable to find the officer who acted as the reviewing officer (RO), the commanding officer (CO), should have acted as the RS. In this regard, the Board noted that the applicable fitness report order, not command policy, dictated the reporting chain. The Board further noted that a different CO was the RO on your immediately preceding fitness report, for 15 October 2004 to 14 June 2005, from the same command. The Board was likewise unable to find the RO's portion of the contested fitness report should have been "not observed," noting that an observed report could properly be submitted for any period, however brief, for which valid evaluation of performance was possible. The Board found it unobjectionable that the report at issue referred to events before the reporting period in order to explain the decision to relieve you for cause. The Board found the RS was correct to use the term "relief for cause," as you were relieved of your duty as operations officer because of alleged substandard performance and lack of professionalism. The Board found the alleged deficiencies cited were sufficient to support relief for cause. The Board was unable to find the RO had "personal animus" toward you. The Board was likewise unable to find the RO did not counsel you about perceived shortcomings, observing that counseling takes many forms, so the recipient may not recognize it as such when it is provided. Finally, the Board could not find the third sighting officer had insufficient basis to evaluate you, noting observation need not be direct.

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