



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

JSR

JSR
Docket No: 11264-08
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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application 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 report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 19 November 2008, a copy of which is attached, and your undated reply to the PERB report with enclosures.

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 in concluding the contested fitness report should neither be changed to "not observed" nor removed. The Board also noted that the reviewing officer concurred with the report. Since the Board found no defect in your performance record, it had no grounds to remove your failure of selection by the Fiscal Year 2008 Lieutenant Colonel Selection Board. 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.

Although the Board voted not to change the fitness report in question to "not observed," you may submit the reporting senior's letter of 30 April 2007, supporting that change, to future selection boards.

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 PENIFFER
Executive Director

Enclosure