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

HD:hd
Docket No. 12204-08
13 August 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.

You requested, in effect, reconsideration of your previous request, docket number 2656-80, denied on 16 July 1980, to remove the fitness reports from the Naval Regional Medical Center (NAVREGMEDCEN), Charleston, South Carolina for 1 April 1977 to 28 February 1978, 1 March to 15 August 1978, 16 August 1978 to 28 February 1979 and 1 March to 15 June 1979 and effect your retroactive promotion to captain effective from the date you were first eligible (and by implication, remove any failure of selection to captain). You also made new requests to remove all entries in fitness reports, an admiral's reprimand, or any other document or file that references you, while assigned to the U. S. Naval Hospital (USNH) Roosevelt Roads, Puerto Rico, in a derogatory manner; grant you all military awards and medals you earned but never received; and send to the Veterans Administration (VA) appropriate qualification details gathered from your "Concealed, Classified, U. S. Navy and U. S. Army Security Related Files."

Your fitness reports from the NAVREGMEDCEN, Charleston were not reconsidered, as you have provided no new and material evidence or other matter concerning these reports that was not previously considered. Your having been diagnosed in January 2008 with stage IIIA cancer, while certainly most regrettable, does not establish you were correct in alleging malfeasance by your chief of service in the radiology department, a charge that, according

to the contested fitness report for 1 March to 15 August 1978, was investigated and found to be unsubstantiated; nor does it establish you were the victim of reprisal for having been a "whistleblower."

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 13 August 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 opinions furnished by the Navy Personnel Command dated 1 and 12 May and 16 June 2009, copies of which are attached. The Board also considered your letter dated 24 July 2009 with attachments.

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.

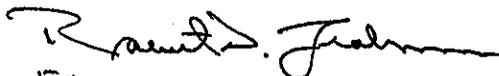
Your record reflects no admiral's reprimand from USNH, Roosevelt Roads. Your fitness report record shows three reports from that command; two, for 16 June 1979 to 29 February 1980 and 1 March to 14 November 1980, from Captain G---, whose "Judgments and Decisions [you say] Were Entirely In [your] Favor on all issues," and a "not observed" report for 15 November to 31 December 1980 (no report from 1 January to 21 March 1981, the date of your discharge).

The Board was unable to find you were denied any military award or medal you had earned. Since the Board found no defect in your performance record, it still had no grounds to effect your retroactive promotion to captain or remove any failure of selection to that grade. Finally, the Board was unable to identify any "Concealed, Classified, U. S. Navy and U. S. Army Security Related files" containing VA qualification details that pertain to you.

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