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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. 03555-09
13 October 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 special selection board (SSB) consideration for the Fiscal Year (FY) 04 and 05 Reserve Master Chief Selection Boards.

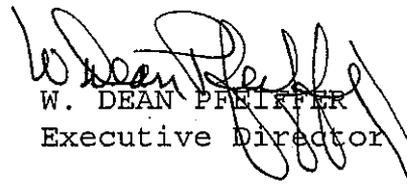
A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 8 October 2009. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. 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 furnished by the Navy Personnel Command dated 11 June 2009, a copy of which is attached. The Board also considered your counsel's undated letter received 19 August 2009.

The Board recognized that you submitted your SSB requests before the nine-month limit, and that your performance record before the regular selection boards in question was incorrect, in that the later removed fitness report for 9 October to 11 December 2001 was in your record and the report for 18 August to 11 December 2001 that eventually replaced it was not present. However, the Board found you did not meet the requirement, in paragraph 2 of Bureau of Naval Personnel Instruction 1401.2, that your improper consideration be "due to circumstances beyond [your] control" and "errors not of [your] making." In this

regard, the Board particularly noted that the investigation of your equal opportunity complaint was completed on 29 January 2003, but you did not submit the complaint under Article 138, Uniform Code of Military Justice, that ultimately resulted in the correction of your record until 4 November 2003, after the FY 04 promotion board had convened on 5 May 2003. The Board was unable to find the delay from 29 January to 4 November 2003 was excusable. 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
Copy to:

