



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

HD:hd
Docket No. 03574-09
18 December 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 removing the enlisted performance evaluation reports for 16 November 2007 to 25 July 2008 and 26 July to 15 November 2008. You further requested advancement to chief petty officer (pay grade E-7) with a date of rank and effective date from the date you would have been advanced, had your advancement not been withheld, with all back pay and allowances due. Finally, you impliedly requested removing the service record page 13 ("Administrative Remarks") entry dated 25 July 2008 and documentation of your removal from the Fiscal Year (FY) 09 Active Duty Chief Petty Officer Selection Board List.

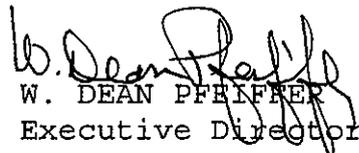
A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 17 December 2009. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Navy Personnel Command (NPC) dated 8 May 2009 with attachments, 15 May and 19 July 2009, the Commanding Officer, U. S. Naval Mobile Construction Battalion ONE THIRTY THREE letter dated 4 June 2009 with enclosure, the NPC PERS-81 letter dated 12 November 2009 to you, Subject: FY 09 Active Duty

Chief Petty Officer Selection Board Decision, and the Memo for Record dated 15 September 2009, copies of which are attached. The Board also considered your counsel's letter dated 14 August 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 advisory opinion's, except paragraph 4.d of the advisory opinion dated 19 July 2009 (the Board found no violation of Bureau of Naval Personnel Instruction 1430.16F, section 721, as it was unable to find the command's administrative action concerning your advancement was directed as punishment or used as an alternative to disciplinary action), and it particularly noted the Commanding Officer's letter of 4 June 2009. You may ask NPC to correct the service record page 13 entry dated 25 July 2008 by redacting the reference to pending disciplinary action. 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

Copy to:
