



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

HD:hd  
Docket No. 04501-09  
4 February 2010

[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 4 February 2010. 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 and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Navy Personnel Command dated 21 and 28 May and 24 June 2009, copies of which are attached.

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.

The Board substantially concurred with the advisory opinion dated 21 May 2009 in finding both contested fitness reports should stand. In this regard, the Board was unable to find the reporting senior lacked sufficient observation of your performance to render a valid evaluation.

The Board found your failures of selection by the Fiscal Year (FY) 07, 08 and 09 Reserve Line Lieutenant Commander Selection Boards should stand as well, as it found no defect in your

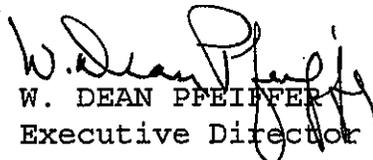
performance record; and it was unable to find your record before any of the promotion boards concerned lacked any material information. The Board noted that you assert you received the contested fitness report for 1 October 2004 to 31 August 2005 three days before the FY 07 promotion board convened on 22 May 2006, so you acknowledge you did have at least some opportunity to submit correspondence to the promotion board in response to that report. The Board substantially concurred with the advisory opinion dated 28 May 2009 in concluding the rear admiral's promotion recommendation letter was properly not considered by the FY 09 promotion board.

Since the Board found insufficient grounds to remove any of your failures of selection for promotion, it had no basis to grant you a special selection board, promote you to lieutenant commander, or set aside your discharge from the Navy Reserve on 1 February 2009 (in connection with which you received a DD Form 256N ("Honorable Discharge Certificate"), rather than a DD Form 214 (certificate of discharge of release from active duty)).

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