



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

HD:hd
Docket No. 06958-09
28 January 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.

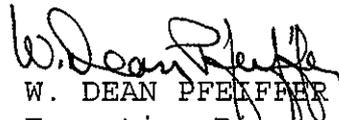
A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 28 January 2010. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. 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 opinion furnished by the Bureau of Naval Personnel dated 6 October 2009, a copy of which is attached. The Board also considered your letter dated 30 December 2009 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. The Board duly noted the supporting statements you submitted and the findings in your favor by the investigating officer and the Navy Personnel Command staff judge advocate concerning your complaint under Article 138, Uniform Code of Military Justice (UCMJ). However, the Board substantially concurred with the advisory opinion and the Commander, Naval Special Warfare Command letter dated 15 July 2008, Subject: Complaint of Wrongs under Article 138, UCMJ by [you] in concluding the removal of your Navy Enlisted

Classification (NEC) code 5326 (SEAL (sea, air and land forces) combatant swimmer) was adequately substantiated, that it was not in reprisal for actions you had taken to resolve issues in your unit, and that the irregularities in administrative procedure were not material. 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