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

JSR  
Docket No: 9569-09  
1 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 completely removing the fitness report for 1 August 1999 to 1 June 2000 and modifying the report for 1 August to 27 September 2002 by removing, from section K.4 (reviewing officer's comments), "and ranks in the top 50% of officers of his grade." You also impliedly requested removing your failure of selection by the Fiscal Year (FY) 2010 Lieutenant Colonel Selection Board.

It is noted that the Commandant of the Marine Corps (CMC) has directed modifying the report for 1 August to 27 September 2002 as you requested.

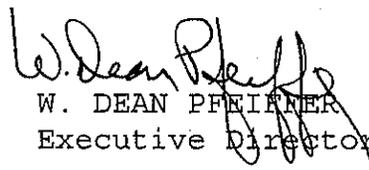
A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 1 October 2009. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, the Board's file on your other case (docket number 8538-09), your naval record and applicable statutes, regulations and policies. In addition, the Board considered the reports of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB), dated 1 June and 8 September

2009, and the advisory opinion from HQMC dated 20 August 2009, copies of which are attached, and your letter dated 25 September 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. In this connection, the Board substantially concurred with the comments contained in the reports of the PERB. The Board substantially concurred with the advisory opinion in concluding your selection by the FY 2010 Lieutenant Colonel Selection Board would have been definitely unlikely, even if your record had reflected the corrective actions effected by CMC in this case and in your other case (removal of the fitness report for 1 August 2001 to 4 February 2002). In view of the above, your application for further relief 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