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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. 09748-09  
13 March 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.

You requested, in effect, that the removal of your name from the Fiscal Year (FY) 08 Active Duty Captain Staff Promotion List be declared void; that you be reinstated to the FY 08 promotion list; that you be promoted, in accordance with your selection by the FY 08 Active Duty Captain Staff Selection Board, with back pay and benefits; and that all documentation of and references to your removal from the FY 08 promotion list be removed from your record.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 11 March 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 16 November 2009 and 10 December 2009 with enclosures, copies of which are attached. The Board also considered your counsel's letter dated 16 February 2010.

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 advisory opinions. The Board was unable to find your name was removed from the report of a promotion board, under title 10, United States Code, section 618, rather than from a promotion list, under title 10, United States Code, section 629. The Board could not find, in the Chief of Naval Operations Action Memo for the Secretary of the Navy dated 3 August 2007, any statement that you failed to report a "violent crime," though it did state you failed to report a "sexual assault." Finally, the Board was unable to find your service was so exemplary that you should have been promoted, notwithstanding the matters on which your removal from the promotion list was based. 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:  
