



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

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JSR
Docket No: 4010-10
10 June 2010

[REDACTED]

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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, removing the fitness report for 3 November 2007 to 6 March 2008; removing documentation of your relief for cause (RFC) from drill instructor (DI) duty; restoring your DI additional military occupational specialty of 0911; restoring your special duty assignment pay terminated on 22 April 2008; and removing, from the Marine Corps Total Force System, the draw case code "AM" (relieved from DI duty).

It is noted that the Commandant of the Marine Corps has directed removing the contested fitness report.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 10 June 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, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) dated 6 April 2010, the advisory opinion furnished by HQMC dated 1 June 2010, and the e-mail from the HQMC Performance Evaluation Review Branch dated 15 April 2010, 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. Notwithstanding the advisory opinion dated 1 June 2010, the Board found the RFC should stand. In this regard, the Board found that the basis for setting aside your nonjudicial punishment (NJP) of 6 March 2008 did not invalidate the finding, in the NJP proceedings, that you had committed the offense of driving while under the influence of alcohol, with a blood alcohol content of .19. The Board concluded that the RFC was supported by the finding of misconduct, without the NJP. In view of the above, your application for relief beyond that effected by CMC 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