



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

JSR

JSR
Docket No. 06266-10
24 March 2011

[REDACTED]

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This is in reference to your e-mail dated 8 June 2010, seeking reconsideration of your previous applications for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

On 13 September 2001, the Board denied your previous request, docket number 6346-01, to remove the fitness report for 1 October to 12 December 1991. On 20 March 2003, the Board denied your previous request, docket number 7823-02, to remove your failures of selection by the Fiscal Year (FY) 2003 and 2004 Lieutenant Colonel Selection Boards. On 21 August 2003, the Board denied your previous request, docket number 3768-03, either to remove the original fitness report for the period in question and replace it with a revised report for the same period, showing your peer ranking as "1" of "9," or amend the original report by changing the peer ranking from "9" of "9" to "1" of "9"; or if neither of these actions is possible, remove the original report; and remove the failures of selection by the FY 2003 and 2004 Lieutenant Colonel Selection Boards. Your previous request, docket number 12841-09, again seeking to remove the original fitness report and replace it with the revised report, or just remove the original report, and remove your failures of selection to lieutenant colonel, which then included failures of selection by the FY 2005 and 2006 Lieutenant Colonel Selection Boards, was administratively closed on 25 May 2010. You now renew the request you had made in the case that was administratively closed. You also add a new request to adjust your lieutenant colonel date of rank and effective date from 1 May 2006 to reflect selection by the FY 2003 Lieutenant Colonel Selection Board, rather than FY 2007.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, reconsidered your case on 24 March 2011. 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 e-mail, together with the Board's files on your prior cases, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the reports of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 22 September 2010 and 2 March 2011, copies of which are attached, and your letters dated 3 November 2010 with enclosures and 17 March 2011.

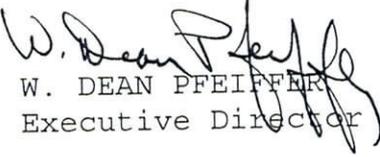
After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB dated 22 September 2010, except paragraph 2.a, and the PERB report dated 2 March 2011 in concluding no correction to your fitness report record was warranted. The Board noted that the requirement to show all completed fitness reports to the Marine reported on did not take effect until 1 June 1992, after the reporting period in question, but before the reporting senior signed the report at issue on 27 June 1992. If that requirement applied to the contested report, the Board concluded the reporting senior's failure to show you the completed report before submitting it was a harmless error, as the report is not adverse and the Board found nothing improper about it. Since the Board again found no defect in your performance record, it again had no basis to remove either of your failures of selection by the FY 2003 and 2004 Lieutenant Colonel Selection Boards, nor did it have any basis to remove either of your failures of selection by the FY 2005 and 2006 Lieutenant Colonel Selection Boards. Finally, because the Board found insufficient basis to remove any of your failures of selection for promotion, it had no grounds to backdate your lieutenant colonel date of rank and effective date. In view of the above, the Board again voted to deny relief. The names and votes of the members of the panel will be furnished upon request.

Although the Board voted not to enter the revised report in your record, you may submit the reporting senior's letters dated 18 June and 2 July 2003 and 27 July 2004 to future selection boards.

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