



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

HD:hd
Docket No. 07237-10
18 March 2011

[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.

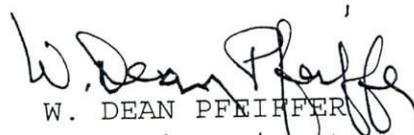
A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 17 March 2011. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your 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 Navy Personnel Command dated 26 July 2010, a copy of which is 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. In this connection, the Board substantially concurred with the comments contained in the advisory opinion in concluding the contested performance evaluation report should stand. In this regard, the Board particularly noted that you were, in fact, reduced. The Board did not believe the reduction in rate (RIR) should be considered to have been unjust, from the outset, just because the commanding officer made an after the fact determination that it should be mitigated. The Board felt it would not be a material correction to grant partial relief, as the advisory opinion recommends, by modifying the contested report to remove all references to the RIR that has been mitigated, since this action would leave in the record

references to the nonjudicial punishment (NJP) and the other punishments imposed, and it would leave in the contested report both the low mark in block 36 ("Military Bearing/Character") ("2.0" (second lowest of five possible marks)) and the block 45 recommendation against advancement. Moreover, the Board found that the court memorandum dated 29 January 2009 and the uncontested performance evaluation report for 17 November 2008 to 1 February 2009 adequately document in your record that the punishment awarded for your NJP no longer includes the RIR. Finally, the Board noted that modifying the contested report as the advisory opinion recommends would make this "special" report appear to have been submitted for an unauthorized reason. 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