



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

JSR  
Docket No. 09121-10  
11 August 2011

2v

[REDACTED]

Dear [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 11 August 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, 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) in your case, dated 16 August 2010 and 15 June 2011, and the advisory opinion furnished by the HQMC Judge Advocate Division dated 18 November 2010, copies of which are attached, and your counsel's letter dated 27 July 2011 and e-mail dated 8 August 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 reports of the PERB, except the finding, in the PERB report dated 15 June 2011, that the reporting officials for the period before the reporting period in question were unaware of the findings of the March 2006 investigation. The Board recognized that the matter had been dealt with by means of a nonpunitive letter of caution. However, the Board found this did not preclude your subsequent superiors from taking the actions you contest. The Board found it was during the period of the contested fitness report that you received a formal counseling for your conduct before that period, as mentioned in section I (reporting senior's "Directed and

Additional Comments") of the report. The Board further substantially concurred with the advisory opinion, except to note that while the Board itself is not an investigative body, it could recommend granting your request to investigate your command and the Defense Intelligence Agency (DIA). The Board was unable to find this request should be granted. In this regard, the Board observed that the provision of the Office of the Chief of Naval Operations (OPNAV) Instruction 5431.F requiring that the investigator be senior to those against whom the complaint under investigation was made does not apply to DIA inspector general investigations. While the Board is without authority to reinstate your security clearance, it could make findings concerning those actions to which you object that had to do with your clearance. However, the Board was likewise unable to find any impropriety in those actions. The Board was not persuaded that any of the actions in question were in reprisal for your equal opportunity complaint or your communication with a Member of Congress. Since the Board found insufficient basis to grant any of the relief you expressly requested, it had no grounds to approve your request to set aside your involuntary discharge from the Regular Marine Corps on 1 August 2009 and retroactively restore you to active duty or any of your implied requests to remove your failures of selection by the Fiscal Year (FY) 2009 and 2010 Major Selection Boards and the FY 2011 and 2012 Reserve Major Selection Boards and set aside action to effect your involuntary discharge from the Marine Corps Reserve on 1 December 2011. 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

Copy to:

Mr. David P. Sheldon