



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

en

JSR
Docket No: 9297-10
16 September 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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 16 September 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 Performance Evaluation Review Board (PERB), dated 18 August 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 report of the PERB.

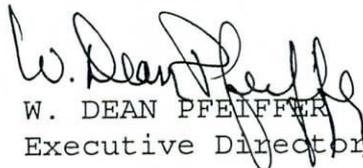
The Board was unable to find you were not counseled, noting that the reporting senior (RS) refers to "numerous informal talks and counseling sessions" with you; and the reviewing officer (RO) says that you were counseled on over 20 occasions, that you were counseled following your return from [REDACTED] that you

received guidance and direction before you submitted the allegedly sexually suggestive briefing product to a female action officer. The Board was likewise unable to find the RS did not, at the beginning of the reporting period, give you a billet description or convey your duties and responsibilities. The Board did not find that the RS contradicted himself, nor did it find that the RO's comments contradicted his mark in block K.2, indicating his concurrence with the RS. The Board found that the RS, a captain, and the RO, a colonel, were not of the same grade, so the RO did not have to give an authority source as would have been required, had he and the RS been of the same grade. The Board did not condone the untimely submission of the contested fitness report, but was unable to find this invalidated it. The Board noted you were afforded an opportunity to submit statements in reply to both the RS and RO. The Board could not find that the RO was incorrect in stating you failed to be at your appointed place of duty on 3 March 2008, nor could it find the unfavorable comments by the RS and RO about your personal appearance were unwarranted. Finally, the Board did not consider it necessary for the RO to specify what he considered sexually suggestive about the briefing product you submitted to the female action officer.

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