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

HD:hd  
Docket No. 11858-10  
14 April 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.

You requested removing all documents reflecting your conviction by general court-martial on 16 November 2007, which was set aside on 22 January 2009, to include documents 10786006, 10786007, 10786008 (duplicate of 10786006), 10786009, 6649116, 6380342, 6649113 and 4981750. You also requested removing or modifying the enlisted performance evaluation reports for 6 December 2005 to 15 November 2006 and 16 November 2006 to 15 November 2007. In addition, you requested that your retired grade be changed from DC1 (pay grade E-6) to DCC (pay grade E-7), and you impliedly requested that you be considered by a special selection board for cycle 194, January 2007. You further requested that you be awarded the Presidential Recognition for Military Service Certificate, a NAVPERS 1650/09 Spouse Certificate of Appreciation for your wife, and a sixth Good Conduct Medal. Finally, you requested relief concerning an alleged failure to give you a physical evaluation when you were leaving active duty.

It is noted that the Navy Personnel Command (NPC) has removed documents 7187449, 6649117, 9671102 and 7295058.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 14 April 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 opinions furnished by NPC dated 24 November and 14 December 2010, the NPC memorandum dated 16 December 2010 with enclosure, and the NPC letter dated 14 January 2011 with attachment, copies of which are attached. The Board also considered your letter dated 24 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 advisory opinions with respect to the contested performance evaluation reports and your request to change your retired grade. The Board was unable to find that your circumstances prevented you from availing yourself of your opportunities to defend yourself or pursue redress regarding the contested performance evaluation reports. Specifically concerning the report for 16 November 2006 to 15 November 2007, the Board found it was immaterial that the entry "CERTIFIED COPY PROVIDED" was typewritten, rather than handwritten; and the Board was unable to find the entry in block 41 (programs for which the reporting senior recommended you) should have included Fleet Reserve. Since you have not been selected for advancement to DCC, the Board was unable to find your retirement grade should be changed as you request. In view of the above, your application to remove or modify the contested performance evaluation reports and change your retired grade has been denied. The names and votes of the members of the panel will be furnished upon request.

You may contact NPC regarding your requests to remove additional documents; grant you special selection board consideration (which would require your requesting a waiver of time limitations in Bureau of Naval Personnel Instruction 1430.16 F, Chapter 1); and award you the Presidential Recognition for Military Service Certificate, a NAVPERS 1650/09 Spouse Certificate of Appreciation, and a sixth Good Conduct Medal. If you have been diagnosed with a physical disability since you retired, you may submit a separate application to this Board concerning your request for relief from the alleged failure to give you a physical evaluation when you were leaving active duty.

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

Enclosures