



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

en

HD:hd
Docket No. 03701-11
23 June 2011

[REDACTED]

Dear Chie [REDACTED]

This is in reference to your counsel's letter dated 25 March 2010 with enclosures, seeking reconsideration of your previous application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

Your previous case, docket number 2306-06, was denied on 17 August 2006. You requested modifying your fitness report for 16 September 2004 to 15 September 2005 by raising the mark in block 35 ("Military Bearing/Character") from "3.0" on a five-point scale to "4.0" and block 38 ("Leadership") from "4.0" to "5.0." You impliedly requested that this report be modified further by adding all favorable comments and promotion recommendations that, you assert, had been unjustly eliminated. You now add requests for retroactive advancement to pay grade E-8 and advancement to pay grade E-9 effective June 2006.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, reconsidered your case on 23 June 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 letter, together with all material submitted in support thereof, the Board's file on your prior case, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the memoranda furnished by the Navy Personnel Command (NPC) dated 27 and 29 October and 24 November 2010, the advisory opinions furnished by NPC dated 24 November 2010 and 18 February 2011, the NPC e-mail dated 12 November 2010 and the memo

for record dated 12 November 2010, copies of which are attached. The Board also considered your counsel's letters dated 11 November 2010 and 22 April 2011 with enclosure.

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 substantial concurrence with the comments contained in the advisory opinion dated 24 November 2010, the Board adhered to its previous decision. The Board was unable to find the command master chief caused the contested fitness report, which was submitted by the commanding officer, to be downgraded in reprisal for your refusal to comply with the command master chief's unlawful orders. In this regard, the Board particularly noted that in blocks 42 and 43 ("Promotion Recommendation") of the contested report, you received the highest possible mark, "Early Promote," ahead of your two peers; and that in block 34 ("Command or Organizational Climate/Equal Opportunity") of the contested report, you were marked "4.0," whereas the same reporting senior had marked you "3.0" in that block in the immediately preceding report for 3 October 2003 to 15 September 2004. Since the Board still found no defect in your fitness report record, it had no basis to recommend your advancement to either pay grade E-8 or E-9. 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.

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:
