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

BJG
Docket No: 9932-09
29 January 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.

You requested reconsideration of your previous requests, docket number 9890-03, to remove your failures of selection by the Fiscal Year 1994 and 1995 Marine Corps Reserve Major Selection Boards and change the reason for your discharge from the Marine Corps Reserve on 31 January 1995 from failures of selection for promotion to resignation. These requests were denied on 2 September 2004. You also added a new request to remove the fitness report for 30 November 1990 to 31 January 1991.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 28 January 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 advisory opinion from the Headquarters Marine Corps (HQMC) Career Management Team (CMT), dated 24 July 2008 with enclosures, and the reports of the HQMC Performance Evaluation Review Board (PERB), dated 18 September 2008 and 8 September 2009, copies of which are attached. The Board also considered your file on your prior case, your letters dated 2 April and 2 June 2008, each with enclosures, and 27 October


2009, and the reviewing officer's letter dated 24 November 2008.

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 from CMT and the reports of the PERB. Since the Board found no defect in your fitness report record, it had no grounds to remove either of your failures of selection for promotion. While the Board agreed with the advisory opinion in concluding your record should not be corrected to show you resigned, it noted that the letter of 20 December 2006 from the Minnesota Army National Guard states that having had two failures of selection for promotion makes an individual ineligible for reappointment as an officer, so your having resigned, with two failures of selection for promotion, would not have made you eligible for reappointment. 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.

The Board noted that if you earn a military pension, you will be paid at the rate of the highest grade in which you satisfactorily served, which in your case was captain, pay grade O-3.

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

Copy to:
The Honorable 