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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. 009830-10
17 February 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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 17 February 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 opinion furnished by the Navy Personnel Command (NPC) dated 12 October 2010 and the NPC e-mail dated 10 February 2011, copies of which are attached. The Board also considered your counsel's letter dated 26 January 2011 with attachments.

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. The Board was unable to find you were punished for the exercise of independent professional judgment on behalf of your client in violation of Navy Rule of Professional Conduct 5.4, that the contested fitness report was in reprisal for your communications with the chain of command in the course of your representation of your client, that you were punished for zeal in representing your client in violation of title 10, United States

Code, Section 949b(b), or that you received an unfavorable performance evaluation because of such zeal in violation of Bureau of Naval Personnel Instruction 1610.10B, enclosure (2), paragraph 4. The Board found you have not exhausted your administrative remedies to have your statement filed in your record with the contested report. Since the Board found insufficient basis to remove the report at issue, and you have not exhausted your administrative remedies concerning your statement, the Board found your failure of selection by the Fiscal Year 11 Staff Commander Selection Board should stand, that you should not be afforded consideration by a special selection board, and that you should not be granted an end of tour award for your service at the command from which you received the contested detachment of individual fitness report. 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. Lawrence Fox