



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

HD:hd  
Docket No. 12409-10  
1 April 2011

[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.

[REDACTED]

You requested that your lieutenant date of rank be changed from 1 September 2006 to 1 May 2003; that your lineal precedence be adjusted accordingly; and that you be afforded consideration for promotion to lieutenant commander accordingly, to include consideration by a special selection board. You also requested back pay from 12 to 30 September 2006. This relief was denied on 7 August 2008 in your previous case, docket number 2806-08. In accordance with the order of the United States District Court for the District of Columbia filed on 4 November 2010, your case was reconsidered.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, reconsidered your case on 31 March 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 advisory opinion furnished by the Navy Personnel Command dated 26 January 2011, the Deputy Assistant Attorney General memorandum opinion dated 28 July 2005, and the Secretary of Defense (SECDEF) memorandum dated 30 June 2006, copies of which are attached. The Board also considered your counsel's letters dated 15 November 2010 and 17 March 2011, each 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, except to note that entry grade credit (EGC) for your Regular appointment in the Judge Advocate General Corps (JAGC) was computed in accordance with title 10 of the United States Code, section 533, not section 12207, but Department of Defense Directive (DODDIR) 1312.3, which Chief of Naval Operations Instruction (OPNAVINST) 1120.11 implements, implements both sections 533 (in paragraph 1.2) and 12207 (in paragraph 1.3); and further to note that title 10 of the United States Code, section 533(f) applies to officers who are merely transitioning from Reserve to Regular status, but the EGC provisions of section 533 apply to officers, like yourself, who are entering a new professional field. The Board further observed that its original denial letter dated 8 August 2008 should have stated that paragraph 2.2 of DODDIR 1312.3, which states the directive does not apply to appointments under section 533(f), is not applicable, as your appointment to the JAGC was not under section 533(f), but that the EGC provisions of the directive are applicable.

You now contend that your student appointment to ensign in the Navy Reserve on 25 August 2006 was both void and unnecessary, impliedly requesting correction of your record to show you were never given such an appointment. The Board found SECDEF did not have to sign that appointment, notwithstanding section 3 of Executive Order 13358 dated 28 September 2004, Tab B to your counsel's letter of 17 March 2011, noting that the memorandum opinion from the Deputy Assistant Attorney General states "it is well established that the documents evidencing an appointment by the President or the head of a department need not be signed by that person." The Board particularly noted that the SECDEF memorandum shows he did approve the appointment in question, so it was issued in compliance with the Executive Order. Concerning your contention that the student appointment was unnecessary, the Board found it was appropriate, if not strictly necessary, for your status to be changed to reflect that you were an officer completing the requirements for appointment in the JAGC. In this regard, as the Board stated in its denial letter of 8 August 2008, paragraph 8.b.(2) of OPNAVINST 1120.11 indicates a prerequisite for a JAGC commission is "official notification of passing the bar examination."

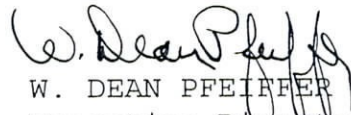
The Board found that title 10 of the United States Code, section 533(a)(2) authorizes SECDEF to prescribe regulations limiting credit for prior active commissioned service, or to deny any such credit

in the case of a person credited with constructive service. The Board found that the applicability of the authority to limit credit for prior active commissioned service is not restricted to persons credited with constructive service,

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:  
