



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

HD:hd
Docket No. 13125-10
4 March 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.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 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 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 18 January 2011 with enclosure and the NPC e-mail dated 1 March 2011, copies of which are attached. The Board also considered your letter dated 16 February 2011 with enclosures.

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. The Board found the contested document should remain in your record, but not for the reason stated in the advisory opinion. The Board found that the favorable outcome of your board of inquiry proceedings did not invalidate the Case Review Committee's substantiated finding that you abused your daughter, and it noted that although the Naval Inspector General (NAVIG) found the reprisal charge against you to be unsubstantiated, the charge that you made an improper referral for a mental health evaluation was found to be substantiated. The Board did observe that under title 10, United States Code, section 624(d)(4), the 18-month maximum delay of promotion in your case did not run from May 2008, when the promotion list was approved, but from

"the date on which the officer would otherwise have been appointed," which according to the NPC e-mail was 1 December 2008. Accordingly, the Board found that the final result of the NAVIG investigation, issued on 9 April 2010, was available before the expiration of the 18-month period on 1 June 2010, so you should not have been removed from the promotion list by operation of law. However, the Board found that you would have been removed from the promotion list in any event, by reason of the substantiated charges of child abuse and improper referral for a mental health evaluation. 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