



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

BJG
Docket No: 8350-01
19 December 2001

[REDACTED] USNR
[REDACTED]
[REDACTED]

Dear Lieutenant [REDACTED]

This is in reference to your application, docket number 3466-00, for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552. You requested promotion to lieutenant commander with a date of rank and effective date of 1 April 1998. You also requested removal of any failures of selection to lieutenant commander. By implication, you requested removal of documentation of your removal from the Fiscal Year 1998 Line Lieutenant Commander Promotion List. This application was denied on 10 January 2001. The attached letter from the Assistant General Counsel (Manpower and Reserve Affairs), dated 26 November 2001, directed that your case be reconsidered for the purpose of addressing your entitlement to purely equitable relief. Pursuant to this direction, your case was reopened and assigned a new docket number, 8350-01.

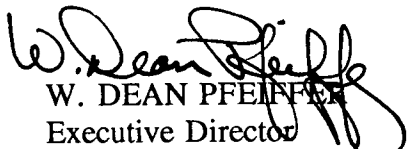
A three-member panel of the Board for Correction of Naval Records, sitting in executive session, reconsidered your case on 14 December 2001. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of the Assistant General Counsel's letter, the Board's file on your case, your naval record and applicable statutes, regulations and policies. The Board presumed you now also request cancellation of your discharge from the United States Navy on 1 March 2001, which resulted from your previously contested failures of selection for promotion.

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 concluding that you do not merit equitable relief, they found that you came to the Board with unclean hands, noting the misconduct which resulted in the delay of your promotion and your ultimate removal from the promotion list. Your counsel contends that you are entitled to relief on the equitable ground which, he asserted, the Board embraced in the case of another officer, docket number 11165-90. However, they noted that the recommendation for relief in that case actually was not based on equitable grounds, but

rather a finding that since no Secretarial authority for the delay of the applicant's promotion had been obtained when his projected promotion date arrived, his promotion should have been effected on that date in accordance with title 10 of the United States Code, section 624(a)(2). 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



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(MANPOWER AND RESERVE AFFAIRS)
1000 NAVY PENTAGON
WASHINGTON, D.C. 20350-1000

November 26, 2001

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION
OF NAVAL RECORDS

Subj: I [REDACTED] USN, [REDACTED] CNR DOCKET
NO. [REDACTED]

This matter was referred to the Board for Correction of Naval Records (BCNR) by agreement of the parties in a case brought by [REDACTED] in the United States Court of Federal Claims. At the request of [REDACTED] counsel, I have reviewed the 11 January 2001 decision of the BCNR. While I believe the decision, as written, explains the basis of the decision in a manner that is adequate for the purposes of judicial review, I believe some further articulation of the rationale of the BCNR's decision is warranted.

To that end, please refer this case to the panel that originally considered [REDACTED] petition and provide a report that addresses whether petitioner is entitled to be promoted in order to correct an error or injustice. While the BCNR decision addresses petitioner's legal contention that he was promoted by operation of law, and rejects that contention based on the rationale provided in the Judge Advocate General advisory opinion, the decision provides no detailed explanation regarding petitioner's entitlement to purely equitable relief. Please reconsider this contention and provide a recommendation regarding relief and detailed report explaining the BCNR's rationale.

[REDACTED]
Jose [REDACTED]
Assistant Secretary
(Manpower and Reserve Affairs)

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