



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

BJG  
Docket No: 11108-06  
19 May 2008

[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 removing the fitness report for 1 February to 30 April 2005 signed by the reporting senior (RS) on 15 July 2005, and filing in its place the fitness report for the same period signed by the RS on 26 April 2005. You also requested removing the 6 June 2005 command investigation of alleged fraternization between you and Lieutenant Commander (LCDR) W---. Your request to remove the investigation was not considered, as it is not in your record.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 15 May 2008. 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 opinions from the Navy Personnel Command, dated 26 March and 3 May 2007, copies of which are attached. The Board also considered your counsel's letter dated 1 July 2007 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. In this connection, the Board substantially concurred with the comments contained in the advisory opinion dated 26 March 2007.

The Board noted that your record now includes both your statement of 12 July 2006 to the contested fitness report and the RS endorsement of 15 August 2007. The Board was unable to find the evidence adduced in the investigation was unreliable or unlawfully obtained, noting the rules of evidence applicable to a judicial proceeding do not apply in this case. The Board did not agree with your contention that the evidence disclosed by the investigation exonerated you. The Board found the result of LCDR W---'s Board of Inquiry did not invalidate the RS findings reflected in the contested fitness report. The Board found your having been given an opportunity to rebut the report at issue afforded you adequate due process. Finally, the Board was unable to find the contested fitness report was used as punishment or as an illicit alternative to disciplinary action.

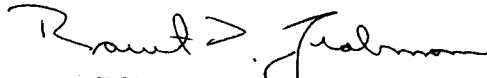
In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

Although the Board voted not to file the fitness report of 26 April 2005 in your record, you may submit it to future selection boards.

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,



ROBERT D. ZSALMAN  
Acting Executive Director

Enclosures

Copy to:

