



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

HD:hd
Docket No. 03870-08
8 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.

Your counsel's brief in support of your application, at page 2, reflects a request for "removal of any adverse FITREPS [fitness reports] from 2001 to 2004 and to be reinstated on Active Duty with a promotion retroactive to August 1, 2004." The "Requested Relief" section, at page 11, reflects a request that you "be granted retroactive promotion to the grade of Lieutenant Commander and Active Duty status effective the date of the FY [Fiscal Year] 2004 LCDR [Lieutenant Commander] selection board" and that you be awarded the back pay and allowances due you or, in the alternative, that a special selection board be convened "to consider [your] candidacy for promotion." As you have been promoted to lieutenant commander, pursuant to selection by the FY 06 Reserve Staff Lieutenant Commander Selection Board, your request for promotion has been treated as a request to adjust your lieutenant commander date of rank and effective date to reflect selection by the FY 04 Active Duty Staff Lieutenant Commander Selection Board.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 8 May 2008. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this

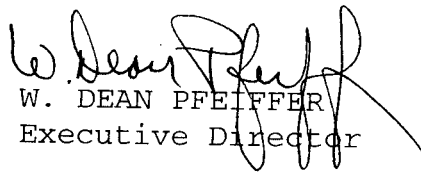
Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinions furnished by the Navy Personnel Command dated 12 September, 22 October, 13 December and 19 December 2007 and 3 January 2008, copies of which are attached. The Board also considered your counsel's letter dated 31 March 2008 with enclosure.

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 advisory opinion dated 19 December 2007 concerning your fitness reports. The Board noted that your fitness report record made no mention of the matters cited in the record of counseling dated 18 July 2002. Further, the Board could not accept your assertion that the allegations mentioned in that document were unfounded, so the Board found it would not be objectionable if those allegations did influence the evaluation of your performance. Since the Board found no defect in your fitness report record, and it could not find that members of the FY 04 Active Duty Staff Lieutenant Commander Selection Board were aware of the charges that were brought against you and then dismissed, it had no grounds to grant any of the relief requested. 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

Enclosures

Copy to:

