



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

JSR
Docket No: 7714-08
28 August 2008

[REDACTED]

Dear [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.

It is noted that the Commandant of the Marine Corps (CMC) has directed modifying the contested fitness report for 30 May to 5 August 2007 by changing section A, item 3.a ("occasion") from "DC" (directed by CMC) to "TR" (transfer).

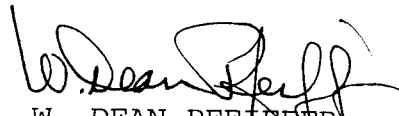
A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 28 August 2008. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. 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 report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB) dated 6 August 2008, a copy of which is attached, and your letter of 14 August 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 comments contained in the report of the PERB. Notwithstanding the statement of 9 June 2008 from Major H---, the Board was unable to find the contested fitness report was

inaccurate or misleading in indicating you had more than one incident that warranted counseling and that you were counseled more than once. Your fitness reports before and after the one at issue did not persuade the Board that report was invalid, nor did the reviewing officer's favorable endorsement of 17 November 2007 on your request for Naval Postgraduate School. Since the Board found no material defect in your performance record, it had no basis to remove your failure of selection by the Fiscal Year 2009 Captain Selection Board or authorize continued service beyond your 15 September 2008 expiration of active service. In view of the above, your application for relief beyond that effected by CMC 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