



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

BJG
Docket No: 10986-08
21 November 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.

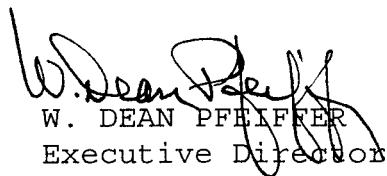
A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 20 November 2008. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. 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 opinion from Headquarters Marine Corps, dated 30 October 2006 with enclosure, a copy of which is attached. The Board also considered your counsel's rebuttal letter dated 4 July 2007.

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, noting that the United States Supreme Court has denied writs of certiorari in the cases of [REDACTED] (473 F.3d 1356 (Fed.Cir. 2007), certiorari denied 128 S.Ct. 66 (2007)), and [REDACTED] (458 F.3d 1372 (Fed.Cir. 2006),

certiorari denied 128 S.Ct. 42 (2007)). The Board did not condone the failure to meet applicable time limits, but found it was a harmless error, in that you would have been removed from the promotion list in any event. Concerning the statement, in paragraph 2.a of the advisory opinion, that the Board "does not have the authority to effectuate promotions," the Board noted that on the basis of a Board finding of error or injustice in the promotion process, those who have the authority to do so may effectuate promotion as a remedial action. However, the Board found no material error or injustice warranting promotion or any other relief in your case. 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

Copy to:
