



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

JSR

Docket No: 00839-09  
19 March 2009

[REDACTED]

[REDACTED]

This is in reference to your application dated 7 October 2008 with enclosure, seeking reconsideration of your previous application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552. Your latest previous case, docket number 5661-08, in which your other previous cases, docket numbers 10160-06 and 3653-07, were considered, was denied on 2 July 2008.

It is noted that the Commandant of the Marine Corps (CMC) has directed modifying the contested fitness report for 10 January to 28 February 2006 by restoring the mark in section A, item 6.b ("Derogatory Material") whose removal CMC had directed in your previous case, docket number 5661-08; removing, from the section D.1 ("Performance") justification, "MRO [Marine reported on] was relieved of duties for violating Depot Order P1510.30L on three separate occasions." and "because on another occasion he"; removing, from the reporting senior (RS)'s addendum page, "Sect[ion] D, 1a. (Con't) knowingly forced a recruit who had recently received oral surgery to sound off until the recruit's mouth began to bleed. The recruit had to subsequently return to dental to have sutures re-sewn in his mouth. MRO was counseled by the Company Commander for this violation and was relieved of his duties." and removing, from section I (RS's "Directed and Additional Comments"), "and relieved of his duties for the third violation."

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 19 March 2009. 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, and the Board's files on your prior cases. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 22 January 2009, a copy of which is attached.

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.

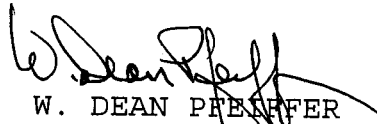
The Board was unable to find you were never told you did not have the ability to perform your duties without supervision, nor could it find you had that ability. The Board was likewise unable to find you never undermined the authority of your senior drill instructors. The Board could not find you were never told you did not have the ability to work well with your fellow drill instructors. The Board was not persuaded that the contested fitness report was used as a counseling tool. The Board was unable to find you had a personality conflict with your first sergeant, but observed a subordinate has an obligation to get along with superiors. Finally, the Board could not accept your unsubstantiated assertion that the RS told you the service record page 11 ("Administrative Remarks (1070)") counseling entry dated 1 March 2006, whose removal was directed by the Board in your previous case, docket number 3653-07, "was his sole basis for giving [you] an adverse [fitness] report."

In view of the above, your application for relief beyond or other than that effected by CMC has again 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