

Jon



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

JSR
Docket No: 8554-09
20 August 2009

[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 that the fitness report for 16 November to 21 December 2002 be completely removed. You further requested that the report for 1 July 2005 to 21 June 2006 be modified, in accordance with the letter from the reporting senior (RS) and the reviewing officer (RO) endorsement, both dated 24 March 2009, by raising the marks in sections D.2 ("Proficiency"), E.1 ("Courage") and G.1 ("Professional Military Education") from "D" (fourth best of seven possible marks) to "E" (third best) and section F.4 ("Ensuring Well-being of Subordinates") from "E" to "F" (second best). Finally, you requested removing your failure of selection by the Fiscal Year (FY) 2010 Lieutenant Colonel Selection Board.

It is noted that the Commandant of the Marine Corps (CMC) has directed removing the contested report for 16 November to 21 December 2002.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 20 August 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

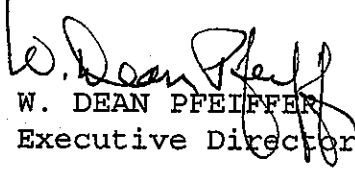
support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB), dated 10 August 2009, and the advisory opinion from HQMC dated 18 August 2009, copies of which are 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 further concurred with the advisory opinion in concluding your selection by the FY 2010 Lieutenant Colonel Selection Board would have been definitely unlikely, even if your record had not included the fitness report CMC has directed removing. 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.

Although the Board voted not to modify the fitness report for 1 July 2005 to 21 June 2006, you may submit the RS's letter and the RO's endorsement 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,


W. DEAN PFEIFFER
Executive Director

Enclosure